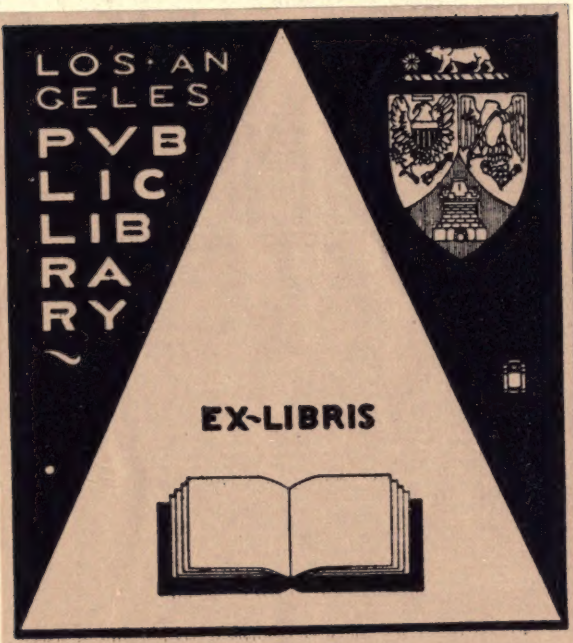

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STATE OF NEW YORK

MESSAGES FROM THE GOVERNORS

COMPRISING

Executive Communications to the Legislature and Other Papers Relating to Legislation from the Organization of the First Colonial Assembly in 1683 to and Including the Year 1906

WITH NOTES

EDITED BY CHARLES Z. LINCOLN

PUBLISHED BY AUTHORITY OF THE STATE

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VOLUME V

1857-1868

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PREFACE.

This volume, covering twelve years, includes the administrations of Governors King, Morgan, Fenton and the second administration of Governor Seymour. Some of the most significant events in American history are embraced in this volume. It records events leading up to the Civil War, numerous important historical matters relating to that great struggle, the election, administration and assassination of President Lincoln, the abolition of slavery, the readjustment of political and financial policies resulting from the war, and the Constitutional Convention of 1867. This volume also includes action by the Legislature and otherwise relating to the initiation of the project for a new capitol.

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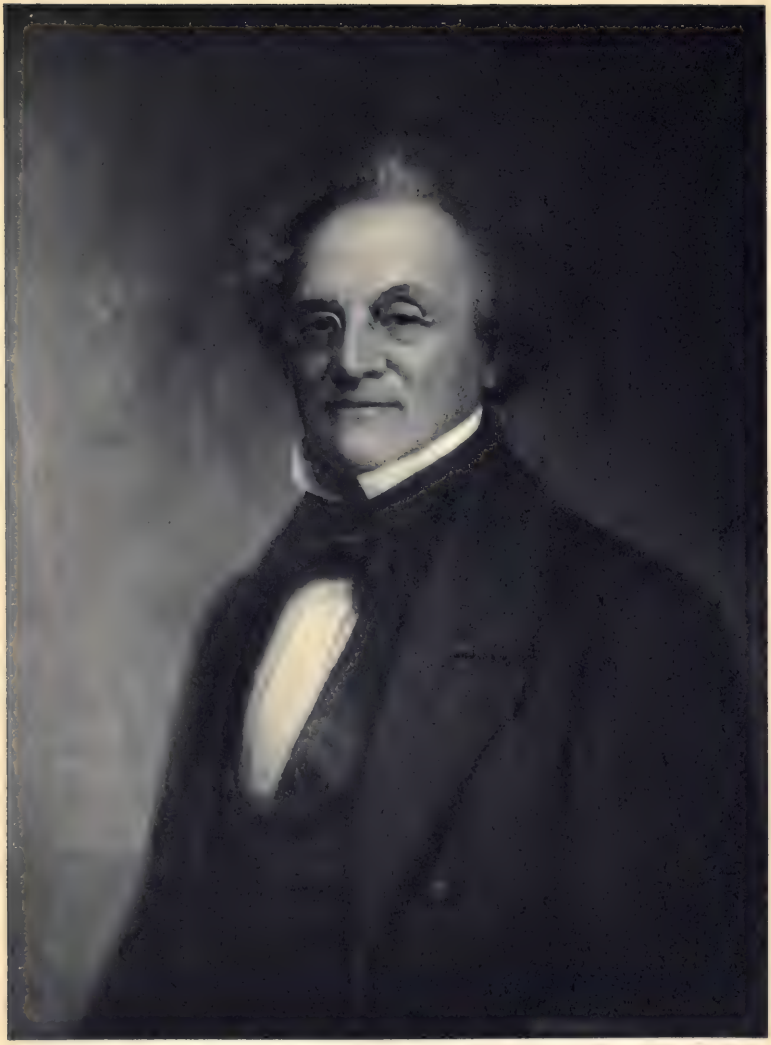

John A. King

MESSAGES FROM THE GOVERNOR.

1857. JANUARY 6. LEGISLATURE, EIGHTIETH SESSION.

JOHN A. KING, Governor.

ANNUAL MESSAGE.

To the Senate and Assembly:

In addressing to the Legislature this communication at the commencement of our public duties, in conformity with the Constitution, my first impulse is to offer to you my congratulations upon the happy, prosperous and healthful condition of our people and commonwealth.

By the blessing of God the pestilence which was at the very door of our great sea-port was turned from it, our population is steadily progressive, and industry, in all its callings, has, during the past year, found constant employment and reaped abundant reward.

From the returns made to me by the different departments, I am enabled to lay before you a summary of the leading interests of the State:

State of the Treasury.

The balance in the treasury at the commencement of the year was	$3,127,510.98
Receipts of the treasury from all sources during the fiscal year ending Sept. 30, 1856	14,677,190.11
	$17,804,701.09
Total of payments from the treasury during the same period	14,563,110.68
Leaving an aggregate balance in the treasury on Sept. 30, 1856	$3,241,590.41

Common School Fund.

The capital of the Common School Fund is		$2,491,916.14
Showing an increase during the fiscal year of	$34,395.25	
The income of the fund for the year is		159,549.17
And the amount appropriated from the income of the United States Deposit Fund for common schools and school dividends is		165,000.00
		$324,549.17
The payments from the fund on account of revenue received, viz:		
Common school dividends	$310,000.00	
Miscellaneous	638.98	
		310,638.98

Literature Fund.

The capital of the Literature Fund is		269,452.12
The income of this fund for the year is	$16,986.56	
And the amount appropriated from the income of the U. S. Deposit Fund is	28,000.00	
		44,985.56
The payment from the fund for dividends to the academies, &c		42,701.93

U. S. Deposit Fund.

Capital	$4,014,520.71
Revenue this year	256,549.03
Amount paid from the revenue of the fund	260,401.40

General Fund State Debt.

Amount of debt exclusive of temporary loans to the treasury, to be paid from revenues of the General Fund is.....	$6,505,654.37

General Fund Debt Sinking Fund.

The deficiency in this fund to meet the payment of the interest on the State debt has increased during the year $6,928.53, showing a deficiency on 30th Sept., 1856, of...	23,780.50

General Fund Revenue.

The deficiency in the revenue of the General Fund is	88,007.79

Contingent Debt of the State.

State stocks issued and loaned to railroad companies	770,000.00

THE CANALS.

From the books of the Canal Department I am furnished with the following abstract of the actual debt outstanding at the close of the last fiscal year, as well as of the revenue and expenditures of the canals. The details under all those heads will be communicated, with other interesting matters pertaining to the canals and their enlargement, in the annual reports of the Canal Commissioners, of the Commissioners of the Canal Fund, of the Auditor of the Canal Department, and of the State Engineer:

Canal Debt.

Under article 7, sec. 1, of the Constitution..	$13,223,704.33
Under article 7, sec. 3, of the Constitution..	8,750,000.00
Interest paid out of the General Fund.....	442,585.49
Total on 30th September, 1856.....	$22,416,289.82

REVENUES AND EXPENDITURES OF THE FISCAL YEAR.

Receipts.

Tolls from the canals	$2,719,925.63
Rent of surplus water	1,815.00
Interest on current canal revenues, &c.	27,392.77
	$2,749,133.40

Payments.

For repairs of canals	$669,406.16	
To collectors, weighmasters, and miscellaneous expenses	117,227.24	
		786,633.40
"Surplus revenues"		$1,962,500.00

Amount set apart by article 7 of the Constitution to pay the interest and redeem the principal of the State debt, viz:

For that part of the debt called the Canal debt, sec. 1.	$1,700,000.00	
For that part of the debt called the General Fund debt (three-fourths of $350,000) sec. 2	260,500.00	
		$1,962,600.00

Tolls received in the fiscal year ending 30th September, 1856	$2,719,925.63
Tolls received in the fiscal year ending 30th September, 1855	2,631,491.11
Increase	$88,434.52
Received from the treasury on account of taxes under chap. 835, § 2, Laws of 1855.	320,000.00

Which has been applied to the Sinking Funds, viz:		
For the General Fund Debt..	$87,500.00	
For the Enlargement debt...	232,500.00	
		$320,000.00
A loan (5's 1874) was effected to supply deficiencies under article 7, § 1, of the Constitution		$4,000,000.00
A loan (5's 1874) was effected to supply deficiencies under article 7, § 3, of the Constitution		500,000.00
		$4,500,000.00
(Included in the Canal debt on the 30th September, 1856.) Redeemed during the fiscal year:		
Canal stocks, 6's of 1855.....	$243,083.34	
Canal stocks, 5½'s of 1855...	800.00	
		$243,883.34
Canal stocks, 5's after 1855.....		3,874,383.00
		$4,118,266.34
Canal revenues, certificates, 6's of 1861	$283,500.00	
Canal revenues, certificates, 6's of 1866	87,500.00	
		371,000.00
Total amount redeemed and canceled.		$4,489,266.34
The entire canal debt as it existed on the 30th day of September last, was.....		$22,416,289.82
Add to this sum of.....		2,250,000.00

the amount authorized to be borrowed during the present fiscal year, which completes the loans provided for in the late amendment of the Constitution for the enlargement and completion of the canals, and it makes the sum of.....	$24,666,289.82

It appears by the Annual Report of the State Engineer, made to the Legislature at its last session, that after the amount raised upon these loans shall have been exhausted and also the premiums realized from them, there will still exist a deficiency of over $2,500,000 necessary to finish the enlargement and completion of the canals.

This deficiency arises from the circumstance that the estimate upon which the amendments of the Constitution were based, included only the construction of the work, and did not include engineering, land and other damages necessarily consequent upon the construction.[a] The work has generally been contracted for below the estimate, and on terms advantageous to the State. However we may regret this deficiency, it is nevertheless to be met and provided for, the interests at stake being too widespread and important to be left for a moment in suspense.

The whole length of the canals and public works is 892 miles. Their entire cost, when complete, will amount to about $50,000,000, and their capacity will then, it is confidently believed, be equal to the transportation of all that may be offered to them, at a rate of toll so low as to defy competition. The deficiency now existing is only about one-twentieth of the entire cost of these works, to be borne by a State in its manhood, and with an assessment roll of nearly fourteen hundred millions of dollars in taxable property. The steps necessary to make good what is needed will demand your early attention. For I venture to assume that under no circumstances will it be deemed

[a] Const. 1846, art. 7, § 3, am. 1854.

wise or expedient, with the experience we already have of the cost and evil of suspending works under contract, to permit those now in progress to be interrupted. Much less should any purpose of selling the canals be for a moment entertained. They are State works in their origin and progress. They should so continue to completion, and forever remain the property and under the control of the State; in honor of the sagacious enterprise that projected them, the liberal public spirit which, in the face of vehement opposition and combined political and pecuniary obstacles, carried them successfully through, and because the time is near at hand when, the whole enlargement effected, they will amply repay all the cost of construction and maintenance and afford in the future a large revenue to the State.

By re-opening the Constitution for such a modification of its financial article as would extend the period for the redemption of the canal debt from eighteen to thirty years, canal loans would be negotiated, as others have been, upon terms highly advantageous to the State.* Such an amendment of the Constitution, however, assuming that the people approve of it, will require nearly two years; and in the event of its failure, the evils of a second suspension of the public works would be inevitable.

The more direct, and therefore, probably the wiser way to complete the enlargement, is to impose a tax, which, while it relieves the exigency of the Government, will bear by no means onerously upon the people. Even if we forget the benefits already conferred upon the State by its canals, the money now required for their completion should only be regarded as a temporary loan, for when completed, the canals, with their largely augmented surplus revenue, applicable to the support of the Government, will, in wholly exempting the people from taxation, at once repay the debt.

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* See amendment 1905, art. 7, § 4, extending the debt period from eighteen years to fifty years.

The Erie canal, with its tributaries, has peopled and enriched our State, invigorated every department of industry, and greatly enhanced the value of our possessions. The three millions of dollars first loaned and then given to the Erie railroad, proves, in the developed resources, and in the largely increased value of the timber and agricultural lands of the "southern tier," and the cheap and speedy access to the coal fields of Pennsylvania, to have been a good investment. With a State rich in its soil, rich in its products, rich in its improvements, and richer still in the enterprise, intelligence and patriotism of its inhabitants, I confidently anticipate a cheerful acquiescence in any just measure looking to the speedy completion of the public works, which the Legislature may adopt. And be assured, in advance, of my hearty co-operation.[1]

The banks, banking associations and individual bankers in this State are in a sound and healthy condition and it is to be regarded as an evidence of the beneficial operations of the General Banking Law upon the currency of the State, that but a single failure has taken place during the past calendar year, and that, an individual banker doing business under the name of the State Bank of Sackett's Harbor with a capital of $20,000.

The notes issued to him are now redeemed at par at the Banking Department, from the proceeds of the sale of the securities deposited in the office. The increase of bank capital in this State during the past fiscal year has been over $12,000,000, all of which, it is believed, finds ready and profitable employment. The total amount of capital now employed in the business of banking exceeds $96,000,000.

The general appropriation and supply bills having unexpectedly failed at the last session of the Legislature, all

[1] Chapters 363 and 365, passed April 13, continued the policy of enlargement and improvement of the canals provided for by article 7, section 3 of the Constitution, and as expressed in previous appropriation acts. Chapter 364, passed April 13, made appropriations for the canal debt and for canal maintenance. There were several other canal statutes relating to ordinary administration.

the usual grants of money to literary, charitable and agricultural institutions and for the various departments of the State government, failed also. Hence the necessity will be obvious to you of making early appropriations for these deficiencies, and of providing at the same time in the liberal spirit which has heretofore distinguished the Legislature of the State, for the future efficiency of these institutions and of the public service.[2]

The census taken under the authority of the State in 1855 presents results which every citizen of New York may contemplate with equal pride and gratification.

The returns as I learn are all now in the hands of the printers and in a great state of forwardness. Meanwhile I am furnished by the superintendent of the census with some facts which you will, I am sure receive, as I lay them before you, with great satisfaction.

The first is a summary of the population of the State at each census since 1790, with the increase between each period and the annual percentage of the increase upon each preceding census:

YEARS.	Population.	Increase.	Annual percentage of increase.
1790	340,120		
1800	588,603	298,483	7.30
1810	961,888	373,285	6.35
1815	1,035,910	74,022	1.92
1820	1,372,814	336,902	5.42
1825	1,616,458	243,902	3.55
1830	1,913,131	296,573	3.67
1835	2,174,517	261,386	2.90
1840	2,428,921	254,404	2.34
1845	2,604,495	175,574	1.44
1850	3,097,394	492,899	3.79
1855	3,466,212	368,819	2.38

[2] Appropriations were made at this session to meet deficiencies occasioned by the failure to enact the necessary legislation at the preceding session.

One of the most prominent indications of the census is the tendency of our population to centralize in cities and large villages. Several agricultural counties have not increased in population for many years. The unlimited field of enterprise offered in manufactures, trade and commerce appears to have caused the growth of cities and towns along the lines and at the centers of our great routes of transportation and travel.

The nativity of our population is as follows:

State of New York	2,222,321	
Other parts of the U. S	306,123	
		2,528,444
Foreign countries		920,530
Unknown		17,238
		3,466,212

Number of deaf and dumb in the State	1,422	
Number of blind	1,136	
Number of insane	2,742	
Number of idiotic	1,812	
		7,112

Value of dwellings	$674,894,357
" farms	789,850,366
" stock	103,776,556
" agricultural implements	26,926,505
" real estate invested in manufactures	70,718,858
Value of tools and machinery	36,191,975
" raw materials used in manufacture	179,390,711
Value of manufactured products	321,261,281
	$2,203,010,609

Acres of improved land	13,574,479
Acres of unimproved land	13,070,699
Value of special manures used	$663,462

CHURCHES.

Number of church edifices	5,077
Value of churches and lots	$27,769,328
Value of other real estate	3,710,816
Number of seats in churches	2,141,159
Usual attendance	1,124,211

NEWSPAPERS AND PERIODICALS.

Total number of newspapers	559
" " other periodicals	112
" " dailies	73
" " tri-weeklies	13
" " semi-weeklies	16
" " weeklies	411
" " monthlies	113
Number whose circulation was reported	540
Number of copies printed per annum of those thus reported	193,294,621
Estimated copies of all classes per annum.	241,749,902

MILITIA.

The Adjutant General reports that there are eight divisions of the militia of the State, composed of twenty-eight brigades, or seventy regiments. The number of enrolled militia is 335,000, of whom 18,500 are uniformed, armed and equipped, constituting a most effective and powerful volunteer force.

THE COMMON SCHOOLS.

It appears by the reports of school officers for the year 1855 that there was expended for teachers' wages, during that year, the sum of	$2,308,035.35
Of which is from the revenue of the School Fund and from the State tax	1,069,639.65
From local taxation in the cities and school districts	779,872.76
From rate bills upon parents and guardians of children attending school	457,430.00
For the purchase of books for district schools and apparatus for the schools	$57,204.58
Expended for building school houses and for out houses and fences	379,969.13
Expended for repairing school houses and for out houses and fences	132,114.72
Expended for hire of school houses	7,628.17
Expended for insurance	4,886.28
Total	$581,802.88
Raised by tax in the cities and counties for the purchase of school house sites	$57,528.65
Raised by city and district tax for fuel	149,257.64
Raised by city and district tax for book-cases and furniture	22,668.61
Raised by city and district tax for other incidental expenses in New York City	335,865.75
Raised by city and district tax for the rest of the State	76,753.69
The aggregate expenditures for all purposes connected with the common schools, were	$3,531,942.57

SCHOOL DISTRICTS.

Reported number in the State in which school has been kept, on an average, eight months in the year		11,883
Teachers employed; number of males	10,117	
Number of females	14,019	
		24,136
The number of children in the State between 4 and 21 years		1,207,214
Reported attendance in the common schools		876,603
Reported attendance in private unincorporated schools		45,362
Reported attendance in academies		29,967
		951,932

This would leave between the ages of four and twenty-one as not attending schools, 255,282.

When it is considered that few children go to school before six, and that between sixteen and twenty-one a large proportion cease to attend school and go to active work, this discrepancy between the whole number of the children in the State and that of those who attend school, is seen to be more apparent than real, and it may be safely concluded that there are very few children in the State, who do not spend a portion of their time in school.

The large number of teachers above reported may seem to indicate, that the whole number is needed and employed, at the same time. Unfortunately the truth is not so but rather the reverse, for the number is thus swelled by the frequency of change — one of the greatest evils in a school system — occasioned by the inadequate compensation to school teachers. Hence, though teaching is resorted to by many as a temporary resource, it is relinquished whenever

better prospects of support present themselves, and the necessity is thus produced of new appointments. The number given above truly represents that of the persons who have been employed for a portion of the past year as teachers. The actual number at any time may be stated at about 13,000.

This single fact if duly weighed, should impress upon the Legislature the expediency of securing to the position of teachers more permanency, by providing more adequate compensation.

Happily, the Legislature of 1856, in lieu of the fixed annual sum of $800,000, which, by the law of 1851, was apportioned to the Common School Fund, imposed a tax of three-fourths of a mill upon each dollar of valuation. The valuation of the State having increased, the proceeds of this tax for this year will be proportionably larger, although sufficient returns have not been received to determine the amount precisely. It is estimated that the increase of the Common School Fund, the contribution of $165,000 from the revenue of the U. S. Deposit Fund, and the avails of the State tax, will amount to nearly $1,400,000. Such liberal pecuniary contribution to the expense of public education, should secure to educators adequate remuneration; and this is only to be accomplished by a wise administration of the school revenues, so that they shall be productive of the desired results. The same Legislature which inaugurated the policy of raising the tax from year to year in proportion to our growing means, sought also to organize a more efficient system for the inspection of schools and teachers. It provides for the election of school commissioners in the several assembly districts, and has thus furnished a body of officers respectable from the extent of their several jurisdictions, and with salaries which, though a scanty compensation for the faithful and intelligent discharge of the duties imposed upon them, are yet sufficient to enable men interested in the work to devote their time

and energies to its performance. I am informed that the commissioners are, for the most part, competent and zealous, and that the labors of such are successful in awakening an increased interest in the common schools among the people, and in elevating the standard of qualification among the teachers.

The system of town supervision for which this was substituted was expensive to the towns and unfruitful in results. The inspection of teachers in too many instances was merely nominal, and the financial reports unsatisfactory.

The new system has not been in operation long enough to afford a practical test of its merits, or to expose its defects, if such there be. It may in future require amendment, but there seems no room to doubt the wisdom of the policy which places the school money in the hands of the supervisors, and holds them responsible for its proper disbursement.

It is very obvious that the measures of most pressing importance for general education are those which look to an increased demand for, and supply of, highly qualified teachers. This the State Normal School does well. It annually sends forth well trained teachers, whose numbers, however, are small compared with the districts to be supplied.

The whole number of pupils during the past year, which embraces the third and fourth terms, has been 342. Seventy-three of these, 22 males and 51 females, have completed the course prescribed, and have received the diploma of the institution, and are now, with few exceptions, engaged in teaching within the limits of the State. The whole number of those who have enjoyed the advantage of the school for a longer or a shorter period to September, 1856, is 2,687. All the counties have, with the exception of three, viz:—Allegany, Essex and Hamilton, been represented in

the school during the past year. Thirty-four counties were represented by the graduating class.

In view of the acknowledged deficiency in the supply of competent teachers, and of the annually increasing revenue of the Common School Fund, it will be for you to decide what additional aid shall be given to this branch of the public instruction, whether by multiplying Normal schools or by such other expedients as may be devised for effecting so great a good.

I should do injustice to my estimate of the value of agricultural education, and of the college for that purpose endowed under the laws of this State, as well as to my own connection with that institution, if I failed at the earliest moment to invite your attention to its present condition. The first successful movement in this behalf was by the late John Delafield, of Seneca county, through whose enlightened zeal and perseverance, an act of incorporation was obtained from the Legislature in April, 1853. Encouraged by this success, Mr. Delafield was earnest in securing friends and subscriptions to the enterprise, until suddenly arrested by the hand of death; not, however, before the trustees of the college had manifested their estimate of his services, character and ability by choosing him president of the college. The loan to this college of $40,000, authorized by the last Legislature, on condition that a like sum be obtained from other sources, enabled the trustees to secure that private aid, and to proceed at once to the organization of the college. They have purchased a farm of 670 acres in Seneca County, on a part of which, extending from Seneca Lake to the village of Ovid, they design to erect the necessary buildings. They have elected Samuel Cheever, of Saratoga County, president of the college; are taking measures to provide competent instructors; and hope to have the institution sufficiently advanced to receive students before the close of the present year. Among the many grants for education most worthily and liberally bestowed

by the Legislature on different institutions in this State. this loan is the first specific aid towards the instruction of youth in the science and practice of agriculture, the greatest interest in this great State. I am quite confident, as it was liberally bestowed, so it will be wisely used; and I will not doubt that the plant thus set out, and already springing into hopeful promise, will receive, as it may need, all seasonable nurture at the hands of future legislatures.

In the month of August last the Dudley Observatory of the city of Albany was inaugurated, in the presence of a large concourse of the scientific men of the country, with the most auspicious promise of usefulness and honor; and we shall henceforth possess an astronomical observatory which, for the completeness of equipment, and the number, delicacy and power of its instruments, will equal, if not surpass, any similar institution in the old world.

While it is gratifying to see the munificence of individuals flowing in so noble a channel, the State itself cannot be indifferent to the progress of true science, inseparably connected as all its achievements are with the material prosperity of the country. You will receive, as usual, reports from the various public institutions of the State for the suppression, the restraint and punishment of crime, and from the eleemosynary institutions for the relief and care of the deaf and dumb, the blind, the imbecile and the insane, and from the dispensaries in the city of New York, which so faithfully provide medical aid for the sick poor.

It is the province of the Legislature to look into the workings of all these, and to afford to them all proper and reasonable assistance, for they are specially the creatures and the concern of Christian civilization.

Reports of the State prisons and of their management, results and pecuniary condition will be made to you as usual by the Comptroller of the State and by the inspectors of the respective prisons — and to these reports I must re-

fer you. Respecting the houses of refuge at Rochester and at Randall's Island, I am enabled by information communicated to me by the managers to speak with some knowledge, and with great satisfaction as to the results there attained.

It is no longer a doubtful experiment but a well ascertained result of the working of these two establishments — that youthful delinquents arrested at the outset of evil courses and subjected to the mild yet vigilant discipline and discriminating control of these institutions — may be rescued in large proportion from vice, and trained to be useful citizens.

In the Western House of Refuge since its opening in 1849, there have been received altogether 769. The belief is expressed to me by the managers that "the benign objects of the Legislature in establishing this institution have been, and are being, attained and realized in an eminent degree."

The older house of refuge at Randall's Island, opened in 1825, has received up to the close of last year 6,880 children. The managers, in a recent communication to me say: "We have every reason to think that the results of our reformatory system have been as satisfactory as at any former period of its history. Of the whole number received up to this time we judge that 70 per cent or nearly three fourths are saved." With such hopeful and unexpectedly encouraging results, I may not withhold my earnest recommendation that such truly benevolent and beneficent institutions should not be left straitened in their means of doing good.

The State Lunatic Asylum at Utica, and the Asylum in New York, under the charge of the governors of the New York Hospital, as well as that hospital itself, the institutions for the deaf and dumb and for the blind in New York, the Asylum for idiots or imbeciles, in like manner demand your care and your bounty, if that can indeed be called bounty, which is simply the fulfillment of a clear duty of

humanity and true citizenship, not less than of considerate economy.

All these institutions are managed, and so far as I have the means of knowing, well and efficiently and conscientiously managed, by disinterested and self-sacrificing individuals, who receive no pecuniary compensation whatever, for their services, but are actuated solely by the higher motive of caring for their afflicted and helpless neighbors.

When, then, institutions, thus beneficent and thus managed, appeal to the Legislature for aid commensurate with the wider field which each succeeding year opens in their operations, they may justly claim to be listened to, with the presumption in their favor, that investigation — without which no legislative aid should ever be granted — will, in their cases, make good the reasonableness of such appeal.

The committee of the Senate appointed to visit, during the recess of the Legislature, the several charitable institutions receiving aid from the State, also the jails and poor houses in every county, having discharged their duty, will, I am informed, lay the result of their labors before the Legislature at an early day.

The excise laws which are co-eval with our existence as a State, and the proper regulation and enforcement of which have ever been deemed essential alike to the morals and well-being of the people, would seem to require, thorough revision. The judicial decision against the act of 1854 (5) for the suppression of intemperance, pauperism and crime, as unconstitutional, has left the sale of intoxicating liquors free from the wholesome restraints of law.* However opinions may differ as to the right or expediency of attempting by compulsory legislation to prohibit entirely the sale as a beverage of such liquors, none will doubt that it is both a clear right and an absolute duty so to regulate their sale, as to diminish as far as practicable the risk of

* See Wynehamer v. People, 13 N. Y. 378.

their abuse if we may not entirely prohibit their use; for of the frightful evils of drunkenness, no exaggeration is possible, and no remedy that law will permit and opinion will sustain to check or eradicate so foul an evil, should be left untried.[3]

The Superintendent of the Onondaga Salt Springs, reports the quantity of salt inspected during the year 1856, to be 5,965,842 bushels. The revenues have been $59,936.85.

The inspection for 1856 is about 117,000 less than for the year 1855, but exceeds that of any previous year.

The year 1856 cannot be said to have been one of prosperity with the manufacturers. The market opened in the beginning of summer unfavorably and scarcely recovered its tone during the whole season. The present languor cannot be permanent, as the increasing wants of the western States must continue to be supplied mainly from this source. New York salt has literally penetrated to the Mississippi river, and will undoubtedly be furnished hereafter to all parts of the northwest above the Missouri line. The reputation of our staple appears to be well established in all the markets to which it has access, and wherever it can be had for the same price, receives the preference over like products from any other quarter.

The public works are generally in good order, but need some extensions. The erection of private works especially

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3 Chapter 628, passed April 16, "to suppress intemperance and to regulate the sale of intoxicating liquors," contained general regulations on this subject. This continued to be the general excise law until superseded by the revised excise law of 1892, chapter 401, which was repealed by the liquor tax law of 1896, chapter 112.

Parts of the act of 1857, chapter 628, were sustained as follows: Section 11 (restriction in license), Board of Excise v. Merchant (1886), 103 N. Y. 143; sec. 17, as amended by Laws 1869, chapter 856 (arrest of intoxicated person), People v. Burleigh (1883), 1 N. Y. Crim. Rep. 522. Section 12, relating to the effect of evidence of drinking on licensed premises was held unconstitutional in People v. Lyon (1882), 27 Hun, 180, as to rule of evidence. See also B'd of Excise v. Merchant (1886), 103 N. Y. 143.

for the manufacture of solar salt has been much stimulated for a year or two. Notwithstanding the recurrence of a dull season, there is every reason to believe that the manufactures at the salt salines in and about the city of Syracuse are destined to a continual progression, and that they will prove an inexhaustible source of profit to the State, and of cheap and convenient supply in one of the primary necessaries of life to the most populous and thriving portion of our country.

The commissioners on harbor encroachments in the port of New York, appointed under the act of 30th March, 1855, have been diligently engaged in the discharge of their duties. Minute surveys have been made of the harbor from Sandy Hook to New York, of the East River to Throg's Neck, of the Hudson to one mile north of Spuyten Duyvils creek, and of that creek and Harlem river. The whole of the water area has been carefully sounded, and the directions and velocities of currents have been ascertained. Exterior limits for the construction of piers have been described for the portion of the harbor within this State, and suitable lines for the shores of New Jersey have, at the request of the commissioners, been laid down by their advisory counsel, consisting of Brig. Gen. Totten, commanding the Engineer Corps of the United States, Prof. A. D. Bache, Superintendent of the Coast Survey, and Commander C. H. Davis, of the United States Navy.

A description of these lines will be transmitted by the commissioners to the Governor of New Jersey for the consideration of the Legislature of that State.

The commissioners acknowledge gratefully the constant and ready assistance they have received in the prosecution of the objects confided to them from the Coast Survey Service, which is still employed in preparing maps and charts to be submitted with the reports of the commissioners to the Legislature as early as possible.

From the magnitude of the work it has been found impossible to complete it within the period prescribed by the Legislature at its last session. I recommend such extension of the time as may be needed, for the thorough execution of this very important undertaking.[4]

The Commissioners charged with the duty of providing for sick and destitute emigrants, appointed under the Law of 1847, continue to devote their time and services, without compensation, to this benevolent object. With the *per capita* tax of two dollars on each passenger, the Commissioners have purchased eligible islands in the East River, upon which large and commodious hospital, school and refuge buildings have been erected, where thousands of sick and destitute strangers receive support and instruction.

The Marine Hospital at quarantine, devoted to the reception of patients with infectious or contagious diseases, is also supported by this fund and managed by the Commissioners, and the experience of this year has added emphatic testimony to that of the past, as to the wisdom and efficiency of a quarantine system, firmly and judiciously administered, for protecting the public health against the inroads of pestilence.

In the discharge of its duties the commission has received and expended in nine years, from the Emigrant Passenger Fund, three millions six hundred thousand dollars. Under this system, as will be seen, emigrants furnish support for their own poor, thus relieving the State from a burthen it had hitherto been compelled to bear.

The number of alien emigrants paying commutation, landed at the port of New York from January 1st to December 31st, 1856, is 142,342 — being an excess of 6,109 over

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[4] By chapter 1, passed January 13, the term of service of the harbor commissioners was limited to the first day of April, 1857.

Chapter 95, passed March 10, appropriated $21,000 for the expenses of the harbor commission, and chapter 763, passed April 17, established the bulk heads and pier lines for the port of New York.

that of last year, yet still less than half of the average of the preceding six years. The proportion of these requiring aid, either from disease or destitution, during the last two years, is still smaller. This is attributed in part to legislation, on both sides of the Atlantic, looking to the accommodation and health of passengers on shipboard; and in part to the better condition and character of the emigrants. Nothing, however, has contributed so essentially to the protection of emigrants, or so largely aided the Commissioners in the discharge of their duties, and in diminishing their expenses, as the designation of Castle Garden as the exclusive landing place for emigrants. Its benefits are experienced daily in the comfortable temporary shelter that it affords; in the information there imparted; and the protection given to strangers heretofore exposed to the extortions and impositions of those by whom they were systematically defrauded.

The cities and counties, other than New York, incurring expense for the support of indigent emigrants, were regularly reimbursed from the emigrant fund up to the commencement of the year 1855, after which time, in consequence of the sudden falling off of emigration, and the consequent diminution of a fund which the support of numerous sick and destitute arriving in former years, soon exhausted, the Commissioners were compelled to defer payments due to the counties. To enable them to meet these demands, the Commissioners will apply for aid to the Legislature; and regarding, as I do, the board of Emigrant Commissioners, like that of the ten governors, which dispenses, with intelligence and integrity, the charities of the city, as eminently beneficent, I commend the whole matter to your favorable consideration.[5]

[5] Chapter 68, passed March 16, authorized the Governor and Senate to appoint a commission composed of three members, who were required to select a site for a new quarantine hospital, and erect thereon the necessary buildings and provide needed fixtures and appliances for a quarantine

While other portions of our State have shared in the increase of population, and the progress of improvement, now so abundantly rewarding the enterprise and industry of our people, a vast region, valuable alike in forest and mineral wealth, interspersed with navigable lakes, remains an almost unbroken wilderness. An apprehension, long but erroneously entertained, that the rigorous climate of that section of the State rendered its soil comparatively valueless, has been relieved by satisfactory agricultural results. It has been ascertained that the products of other northern latitudes, grow and ripen in the section referred to. For grazing purposes, much of the land upon what is historically known as "John Brown's Tract," is equal in value to the farming lands by which that tract is surrounded. This hitherto impenetrable region, therefore, when opened to settlement by needed facilities, will furnish timber and iron in exhaustless quantities, maintain a numerous and hardy population, and add hundreds of thousands of productive acres to the assessment roll of the State.

If those who cause two blades of grass to grow where but one grew before, are recognized as public benefactors, the importance of reclaiming and subduing hundreds of square miles of wilderness lands, situated in the heart of our State, will not, I feel assured, escape the attention of the Legislature.

In this rapid, yet unavoidably lengthened sketch of the condition of our State, its population, agricultural resources, wealth, and educational and religious institutions —in its magnificent charities, its far-reaching yet well connected artificial system of inter-communication, its

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hospital. The site and building plans were to be subject to the Governor's approval, and the amount to be expended was limited to $150,000.

Chapter 579, passed April 16, was intended to provide further protection to emigrants. Chapter 673, passed April 16, authorized the comptroller to loan $30,000 to the Commissioners of Emigration, which amount was to be repaid within one year from commutation funds.

orderly and economical government and contented and prosperous people — a state of society is exhibited which, in attracting the admiration of others, may well receive, as its best rewards the dutiful attachment and fidelity of our own citizens, for here we see what freedom has done — freedom of labor, of enterprise, of speech, of thought, of worship.

It belongs to us all upon whom the Constitution devolves the authority of government for the time being, to take care that in our keeping the interests and honor of the State suffer no wrong; so that when we in turn shall yield our places to those who are to succeed us, we shall be able to hand over the great trust unimpaired and unsullied.

Having thus communicated to you the general condition of the State, I beg leave to submit for your consideration some subjects primarily connected with the city of New York, which have forced themselves upon my attention, and to which therefore I may not unfitly direct yours, as all of them have a bearing beyond that immediate community. And first as to the abuse of the elective franchise — a topic of universal concern in a representative republic, where place and power are given and taken away solely by the popular vote — all will agree in theory, that in order to ensure respect for its results, this vote should be free, and should be pure. All know that in the city of New York, and measurably in other large cities, it is not pure, and often is not free. It concerns all citizens alike, of whatever party, of whatever country, of whatever tongue, themselves entitled to vote, that this right, the most precious that man in a social state can enjoy or exercise, shall not be rendered worthless in their hands, through the unlawful exercise of it by others. No one will dispute these premises, but when it comes to the application of the remedy there is at once a difference of opinion, even among those honestly seeking one. I will not permit myself to doubt that the wisdom of the Legislature is

competent to devise a corrective, that will be at once effectual and constitutional. And I accordingly commend this subject to early and earnest consideration.

The municipal affairs of the city will also undoubtedly require and receive a large share of your time and attention. The interests of the citizens of the chief city of our State, and of the Union — a metropolis embracing one-fifth of the inhabitants of the whole State — are so vast and so varied, and its good government is so necessary to the comfort and convenience not only of those who dwell within its limits, but of all the citizens of the State who are attracted to it by social ties, or by the demands of business or trade, that no apology can be necessary for inviting your earnest attention to this important subject. That the administration of the municipal government of the city of New York has failed, under the present charter of that city, to attain the ends for which all governments are instituted — an honest and thorough enforcement of good laws in such manner as to secure social order with the least hardship and burthen, pecuniary or otherwise, to the individual citizen — is universally conceded. While admitting that the evils which exist may be the result, possibly, in a large degree, of the selection for the discharge of important public trusts of unfit persons, it is quite as certain that there are radical defects in the existing charter of the city, which demand correction. It is not my purpose or province to point out in detail these defects, because they will be more properly and effectually brought to your notice by memorials from the citizens of New York and by its chosen representatives. I deem it my duty, however, to say that the reorganization of the police system of that city seems absolutely necessary. At present the recorder and city judge are two of the members of the board of the police commissioners, the mayor being the third. Experience has shown in this instance, as in all others, where the attempt has been made, that it is unwise to throw upon judicial officers the discharge of such functions. Their

time is withdrawn from their proper duties, while their authority as magistrates is weakened, if not destroyed, by such incongruous occupations. If, as should be the case with all judicial officers, they devote themselves exclusively to their judicial duties, and thus fail to discharge their duties as police commissioners, the whole management of the police system, with its vast power and patronage, is thrown into the hands of the mayor alone. If, neglecting the bench, they act as police commissioners, they can scarcely fail to become the objects or subjects of political or personal controversy and ill will. A new police system for the city of New York is therefore required. Experience renders it quite certain that the Legislature will hesitate to entrust the management of that system to the mayor alone. But whether the power should be lodged in a board elected and constituted upon the same principles which have proved so eminently beneficial in regard to the governors of the almshouse of the city of New York — securing integrity, economy and efficiency with a freedom from all disturbing political or party elements — or whether the board should be appointed by the Governor, with or without the advice and consent of the Senate, are matters which I submit to the superior wisdom of the Legislature. Nor do I venture to make any suggestions as to the proper mode of appointment and tenure of office of the heads of departments and other municipal officers, or even of the members of the common council themselves. I conceive that I discharge my duty in calling your attention to the subject, and in assuring you of my concurrence in all just and proper measures which shall secure your approval for the purpose of rescuing the citizens of our commercial capital from the evils under which they are suffering so severely.[6]

[6] Chapter 569, passed April 15, established the Metropolitan Police District, and provided for the government thereof. It included the counties of New York, Kings, Westchester and Richmond. It created a board of police,

Yet another subject of great interest to the city and indeed to the State, has been pressed upon my notice, as doubtless it will again be upon yours, that of the removal of the quarantine establishment from its present site on Staten Island to some point more distant from the city. In the absence of any personal knowledge or official information respecting it, which might enable me to speak with confidence, I must content myself with commending to your care this with other city matters. [See note 5.]

I have yet another duty to perform — a duty, the obligations of which, I am not at liberty to neglect, even if I were so disposed; and the performance of which, in my judgment, is rendered imperative by the respect which is due to the sentiments and votes in the recent presidential election of a great majority of the people of this State and of the other free states.

I do this in no partizan spirit, but under the conviction that the great principle at issue in the election, and which it so triumphantly vindicated, lies at the root of our free institutions; and is alike the concern, and should be equally the care, of all citizens who rightly estimate those institutions. No mere party question could call forth so deep an interest, and so significant and decisive a vote throughout the length and breadth of the State; and I venture to believe I do not mistake its import, nor your convictions respecting it when I assume, as its deliberate and irreversible decree, that so far as the State of New York is concerned, there shall be henceforth no extension of slavery in the territories of the United States.

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composed of five commissioners appointed by the Governor and Senate. This board was vested with the general supervision and administration of the police of the district.

The act was sustained by the Court of Appeals in People ex rel. Wood v. Draper (1857), 15 N. Y. 532, and in People ex rel. McCune v. Police Board (1859), 19 N. Y. 188. But in Devoy v. New York (1867), 36 N. Y. 449, the act was held unconstitutional as to the transfer of the power to appoint police court clerks. See also Harbeck v. New York (1863), 10 Bosw. 366.

This conclusion I most unreservedly adopt, and am prepared to abide by it, at all times, under all circumstances, and in every emergency.

I am the more emphatic on this point, because it has been thought by the present incumbent* not incompatible with the dignity and decorum of the presidential chair to stigmatize the conduct, in the recent election, of a large majority of the people of this State, as well as of other free states, by unwarrantably imputing to them motives which they do not entertain, and aims directly contrary to those they both avow and strive to promote. Those imputations we know to be wholly groundless, yet they have been put forth with all the authority which high station and deliberate and artful preparation can confer; and in the discussion in the Senate of the United States of the President's message, they seem to be received and treated as true, by persons whose position as Senators gives weight to their arguments. Hence it will not be out of place here, to state the views which we of the free states do entertain in reference to the great issue that has called down upon us such extraordinary denunciations. We hold, then, first, to all the obligations, compromises and guarantees of the Constitution, as explained and understood by its founders, and, until comparatively recent days, acquiesced in by the whole country; and especially we hold, as to slavery, that in the States where it exists, it exists by virtue of the local law alone. But that it neither exists, nor is confirmed there nor anywhere by the force and effect of the Constitution of the United States. Secondly, that under the Constitution of the United States, Congress has the power to exclude slavery from the territories, and we insist that it should exercise its power, whenever necessary, to effect that purpose.[b] Thirdly, that under the Constitution Congress has the power to admit new States into the Union,

* Franklin Pierce.

[b] U. S. Const. art. 4, § 3, clause 2.

when, and as it may judge proper and expedient, having reference, among other considerations, to their social condition.[c] Fourthly, that the constitutional restriction, until 1808, of the power of Congress to prohibit the slave trade, and the prohibition afterwards of that trade by acts of Congress, constitute one of the compromises of the Constitution which should be firmly insisted upon and forever maintained inviolate.[d] But we do not claim, on the contrary, we disclaim, any right or power, or desire or purpose, to interfere with the domestic institutions of any State, or with the laws of the respective States, within the jurisdiction thereof. The agitation of the subject of slavery is not attributable to us, but was forced upon the country by the repeal of the Missouri compromise, and by the new and unsound construction attempted to be given to the Constitution of the United States, by which that instrument is made to carry slavery wherever it goes. When, therefore, we resist this aggressive spirit, and the extension of slavery to which it tends, we are acting within the Constitution, in defence alike of its spirit and its letter, and in opposition to the fanaticism of slavery.

These are fundamental principles which we have maintained and shall continue to maintain. It falls not within our province to legislate upon the subject of slavery in other States. Happily at an early day this State purged itself from that great evil, and its record since has been consistent and unvarying in behalf of liberty. When the agitation respecting the admission of Missouri was at its height, this State, so far as its Senators and Representatives in Congress would obey the voice of the Legislature, forbade by an almost unanimous vote the admission of Missouri as a slave state. That vote stands unrepealed to this day, and its generous spirit spoke again, yet more impressively, at the late election, when it said, that Kansas,

[c] U. S. Const. art. 4, § 3, clause 1.
[d] U. S. Const. art. 1, § 9, clause 1.

too, must be free. The Missouri compromise was resisted by this State as an unwarrantable concession to slavery, and a deep wrong to freedom; but with the loyalty to the Constitution and the Union, in which she has never faltered, when the Congress of the United States decided to sanction that compromise and to admit Missouri as a slave state, conditioned that thenceforth slavery should not be carried north of the line of 36° 30′, New York acquiesced without approving, and never sought to disturb that settlement. When, however, slavery having received its full equivalent, it was proposed to withhold or to withdraw the equivalent to freedom in the restriction of slavery within the specified limits, and so to open all the territories of the United States to that blight, New York insisted on what virtually was a contract; and though unfavorable to it when made, was nevertheless intent that freedom should not lose its share of the bargain.

Hence New York opposed, of right and in perfect consistency the repeal of the compromise adopted against her will. In vain — that act which had stood on the statute book for more than thirty-four years, with all the sacredness of an implied contract, was repealed, and the President of the United States in his recent message characterizes it as "an objectionable enactment, unconstitutional" in "its effects, and injurious in terms to a large portion of the states.* " Objectionable to this State that enactment undoubtedly was at the time, but for precisely opposite reasons to those implied in the President's censure, because it restricted freedom and extended slavery. The compromise was forced by the south upon the free states, but New York was as thoroughly opposed to it then, as the south, speaking through the President, can be now, when they have received all its benefits, and the turn of freedom is coming. But neither New York nor the free

* See Scott v. Sandford (1857), 19 How. 393, in which the Missouri compromise was held unconstitutional.

states ever deemed that enactment unconstitutional, but submitted reluctantly, yet unreservedly to it; for the love of freedom and respect for law, have ever been inseparable here. At this late day, a President of the United States pronounces the Missouri compromise unconstitutional, although it has every sanction of precedent, contemporaneous exposition, unbroken usage, and, up to a recent day, universal assent.

It was the unjustifiable repeal of the compromise that, at the recent election, roused so deep an excitement, which was aggravated by the fearful scenes of violence and wrong in Kansas. These evils sprang from the same bitter root — the effort to extend slavery — and were brought about by the faithless renunciation on the part of Congress of the absolute and exclusive right conferred upon it by the Constitution of "making all needful rules and regulations respecting the territory and other property belonging to the United States."[e] It is not competent for any branch of this government, nor all its branches combined, short of an amendment of the Constitution in the prescribed form, to transfer to others a power confided by that Constitution to Congress; and when the phantom of squatter sovereignty was set up as an excuse for this abandonment of duty, not only was there treachery to the Constitution, but a mockery of substantial popular sovereignty. Since, in theory, it professed to leave to the inhabitants of the territory the right to govern themselves, while, in fact, the federal executive appointed all the chief officers — governor, judges and marshals — and again, the pretext was to transfer to the first few accidental settlers the right to determine, finally it might be, the condition of a territory capable of sustaining millions, while in fact, as irrefutably established by the committee of the House of Representatives appointed to investigate the troubles in Kansas, the *bona fide* settlers were ousted of

[e] U. S. Const. art. 4, § 3, clause 2.

the right thus pretended to be conferred upon them. Hordes of armed men from Missouri and other States took possession of the polls, drove from them the actual residents who would not co-operate in their avowed purpose of imposing slavery upon Kansas, and chose members of the Legislature infamous to all time, by the atrocious laws which they afterwards enacted. Happily and honorably for free institutions, though most disastrously to themselves, the sons of this State, of other free States, and we may even hope some from the slave States, who went to Kansas for a new home, have steadily and successfully resisted this usurpation. Yet these are the acts which, by judicial tyranny, and at the point of the bayonet of troops of the United States, paid out of the common treasury, the President of the United States has upheld and enforced. The consequence to some of the settlers was imprisonment, to some death, to all uncertainty and alarm, and to many aggravated loss and suffering. It is hoped that under better counsels, order and law and harmony may be restored; but meantime great distress and privation will be endured, and, therefore, I would respectfully submit to your consideration the expediency of contributing, by an appropriation of money, to be used in case of need, towards the relief of the destitution and suffering which misgovernment has occasioned in Kansas, with the single remark that to do so would only be an act of duty towards our own kith and kin who have migrated to that new region, of like character, but certainly of higher obligation with the appropriations which, in a spirit of benevolence, the Congress of the United States have made from time to time for the relief of distant and foreign populations overtaken by great and sudden calamity.[7]

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[7] The Legislature did not make the appropriation recommended by the Governor, but adopted two resolutions: one, declaring that "this State will not allow slavery within her borders, in any form, or under any pretence, or for any time however short." Another resolution, referring to the de-

I cannot close this communication without adverting to the striking illustration afforded by the recent election of the harmonious working of our institutions; and of the spirit of implicit submission to laws of their own devising, and which they feel to be equal and just, evinced by the citizens of all portions of our extended republic. After an exciting canvass lasting through many months, in which all took part, no sooner was the result ascertained, than the most entire and absolute acquiescence ensued, and without rancor or menace or disturbance on the part of those who were defeated; the ordinary routine of life was resumed, without shock of any sort to industry, to credit, or other interests of society. It is greatly to misjudge such a spectacle, and a wrong to the cause of constitutional liberty to find, as has been done, in such a contest, only grounds for criminating the motives of a large portion of the most intelligent, educated and moral of our population; and none of rejoicing in the signal vindication of the stability of popular governments, nor of thankfulness to the Almighty for his protection in this, as in every past epoch of our history as a people. May that good and gracious Being still watch over and guide us in all our deliberations.

JOHN A. KING.

Albany, January 6, 1857.

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cision in the Dred Scott Case, 19 How. (U. S.) 393, decided in March, 1857, holding in substance that the black man had no rights which the white man was bound to respect, declared that "the supreme court of the United States by reason of a majority of the judges thereof having identified it with a sectional and aggressive party, has impaired the confidence and respect of the people of this State."

The Legislature of 1861, by chapter 17, appropriated $50,000 for the relief of Kansas sufferers.

SPECIAL MESSAGES.

January 16. To the Senate: Transmitting the following communication from the Governor of New Jersey:

STATE OF NEW JERSEY:

EXECUTIVE DEPARTMENT,
TRENTON, *December* 15, 1856.

To His Excellency,

MYRON H. CLARK, Governor, &c. &c.

SIR.—In August last, it was reported to me, that infected vessels had been sent by the Health Officers of New York from an anchorage at your quarantine station to an anchorage in the waters of this State in the vicinity of the South West Spit, to the alarm of our citizens residing on the shore of Raritan Bay.

To ascertain the truth of the report, I appointed commissioners to investigate the case, and to report to me the result of their investigations. After diligent inquiry, they have reported that 'four square rigged vessels were found anchored in the waters within the jurisdiction of New Jersey.'

The commissioners also ascertained from undoubted authority, that these vessels had been sent there by orders from the Board of Health, or the Health Officers of the State of New York, for the purpose of quarantine 'having on board infectious disease,' proofs of which accompanied the report.

I beg to call your Excellency's attention to the fact, and to request that measures may be taken to prevent the recurrence of the unpleasant violation of the agreement between the States of New York and New Jersey, as to limit, boundary and jurisdiction.

I have the honor to be
With great respect,
Your Excellency's Ob't Serv't,
RODMAN M. PRICE.

January 17. To the Assembly: Transmitting a communication from the office of Indian Affairs in the Department of the Interior of the United States relative to the sale for highway taxes of lands belonging to the Seneca Indians in Allegany and Cattaraugus counties.[8]

February 11. To the Assembly:

Veto of a bill entitled "An act to provide for certain expenses of government prior to the year one thousand eight hundred and fifty-seven."[9]

"I have attentively examined the provisions of this bill, which failed to be acted upon last year by reason of the adjournment of the Legislature; and after carefully weighing the responsibility, and the duty imposed on me by the Constitution, I have come to the conclusion that this bill ought not to become a law, and for the following reasons:

It will be perceived in looking at the numerous sections of the bill, that it contains large appropriations of money, for the payment and expenses of committees, composed of members of the Legislature, who held their sittings during the recess of the two Houses. I object to the payments and allowances to the members of these committees, because they cannot be reconciled with the Constitution, which

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[8] Land on the Allegany and Cattaraugus Reservations, which had been sold for taxes and bought by the State, was released from the operation of the tax sale by chapter 45, passed February 19, and the amount of the taxes was made a charge on the State treasury.

[9] The deficiency appropriation bill was not passed over the veto, but a new appropriation bill was passed omitting the clause objected to by the Governor, and became a law, chapter 3, on the 23d of January.

The provisions in the vetoed bill making appropriations for the services and expenses of members of the Legislature acting on committees were included in a separate bill which was also vetoed for the reasons stated in the original veto. See Special message of April 15. The new bill was passed over the veto and became a law, chapter 570 on the 15th of April.

Another bill of the same general character was vetoed (see special message of April 16), but was passed over the veto and became a law, chapter 634 on the 16th of April.

regulates and defines the amount of pay, and expenses to which a member of the Legislature is entitled, or with the provisions of the law of July 14th, 1853. I assume that the members acting upon the several committees, have been previously paid the three hundred dollars each, to which they were entitled under section 6, article 3 of the Constitution, for their services during the session of the Legislature. That section provides as follows:

'The members of the Legislature shall receive for their services a sum not exceeding three dollars a day from the commencement of the session; but such pay shall not exceed in the aggregate three hundred dollars for *per diem* allowance, except in proceedings for impeachment. When convened in extra session by the Governor, they shall receive three dollars per day. They shall also receive the sum of one dollar for every ten miles they shall travel in going to, and returning from their place of meeting, on the most direct route.'

The plain object of this section was to limit the sum which any member of the Legislature, *as such,* should receive for his services and expenses, during the existence of any one Legislature, to the sum of three hundred dollars, with the addition of one dollar for every ten miles travel. The only cases in which this aggregate can be exceeded, are those specified in the section. These specifications give additional force to the prior words of positive limitation. If, therefore, the sums are claimed by the parties, as *members* of the *Legislature,* there would seem to be no way of reconciling the claim with the Constitution. If the Legislature had continued *in session* during all the time these committees were engaged in their inquiries, the members *serving on the floor* of the two houses, could not have obtained any compensation, and it is not perceived what additional or better claim those members could have who should chance to be engaged on committees away from the capitol.

The question then arises, whether compensation can be received by these parties in any other character than that of members of the Legislature. That the Legislature, or either branch of it, has power to institute inquiries into all wrongs which are remediable by legislative enactment, and to pursue such inquiries by the examination of witnesses and otherwise through the agency of committees of its own body, in the same manner as is practiced by grand juries, cannot be doubted. The necessity of such power is obvious, and it has accordingly been exercised by all regularly organized legislative bodies. This power, however, extends only to such matters as are 'necessary to enable the Legislature to perform its principal or administrative and legislative functions,' and the committees conducting such inquiries, whether during the session, or during the recess, act as members of the Legislature. They are certainly *civil officers,* and, as such, have power to administer oaths, and, when authorized, to send for persons and papers, may issue compulsory process for the attendance of witnesses and commissions for the examination of witnesses abroad. All these powers are exercised by such committees, by *virtue of their* office as members of the Legislature, and not in any other capacity. It is undoubtedly in the power of the Legislature to appoint officers, or organize bodies, other than its committees, to investigate supposed abuses, or to collect information required as the basis of administrative or legislative action; but this, I apprehend, can only be done by statute passed in the usual form and approved by the Governor, and no member of the Legislature would be eligible to such post. The statute now authorizes either branch of the Legislature to empower its committees to appoint commissioners to take testimony during the recess of the Legislature. The fact that these commissioners are required to take the oath of office prescribed by the Constitution,[f] would indicate that if the com-

[f] Const. 1846, art. 12, § 1.

mittees in discharging the same duty act in any other capacity than that of members of the Legislature, a new oath of office would be necessary on their part. In my judgment, however, the provisions of the Constitution and statute before referred to, show beyond question that such committees act in their capacity of members of the Legislature, and not otherwise.

It may be insisted that, at least, the expenses of such committees may be paid. I do not, however, see how such allowance can be made without establishing a principle which would entitle all the members of the Legislature to be paid their expenses in attending its session, in addition to the allowance of ten cents a mile for travel. The Constitution furnishes no greater warrant for the allowance in the one case than in the other, and none for either.

However unfortunate it may be considered that the Constitution has denied to the two Houses, power to compensate their committees for such service and expenses, there is, in my judgment, no room for the exercise of discretion on the part of the Executive in relation to a matter where the provisions of the Constitution seem so clear and imperative.

Having thus stated my objections to the sections of the bill, I cannot close this communication without expressing my sincere regret that the sums appropriated by the bill, which, in the aggregate, amounts to more than seven hundred thousand dollars, and especially, those for charitable and beneficent objects, as well as for the extinguishment of a part of the State indebtedness, must necessarily be postponed, should the objections to the bill be sustained.

Would it not be safer and wiser legislation to distinguish in the future, objects and grants so manifold and distinct, rather than to group them together, in one general and sweeping enactment? Should the Legislature agree with me, that the objections to the bill are sustained by the Con-

stitution, I trust I may then rely with confidence upon the readiness and liberality of both Houses to afford at the earliest moment, effective and substantial support to every meritorious object in the bill, which has been the subject of this communication."

March 6. To the Assembly: Transmitting the report of the Commissary General for the year 1856.

March 9. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 9, 1857.

"I transmit herewith the proceedings of the Board of Trade of the city of Albany on the subject of the present condition of the channel and bars of the Hudson river, between New Baltimore and the city of Albany. I concur fully in the views presented in the memorial; and believing that the great inland commerce of the State imperatively demands that every effort should be made for the immediate removal of the obstruction which impairs the free and full navigation of the Hudson River, I commend the subject to your favorable consideration, and trust that in view of this unexpected impediment to the general trade of the State, you may deem it expedient to grant such an appropriation of money as may be adequate upon enquiry, to effect the object desired, looking with confidence to the next Congress to reimburse the same to the treasury of the State.[10]

JOHN A. KING."

[10] Chapter 374, passed April 13, appropriated $25,000 to be expended in removing obstructions in the Hudson River between Troy and New Baltimore.

March 20. To the Assembly: Transmitting the annual report of the Adjutant General.

April 15. To the Assembly:

Veto of a bill entitled "An act to pay certain persons for services rendered to the State." [See note 9.]

"I return without my signature, the bill entitled 'An act to pay certain persons for services rendered to the State,' as objectionable, on the same grounds as those which compelled me to return in like manner the 'bill to provide for certain expenses of government prior to the year 1857.' The persons and the services are the same as those specified in that bill, and I am unable to perceive that any change in the phraseology respecting them in the present bill can alter or affect the fact that it was as members of the Legislature, that these persons were appointed, and as members of the Legislature, and in no other capacity whatever did they render the services. They are thus brought within the explicit provisions of the Constitution, section 6, article 3, limiting to $300 the compensation which a member of the Legislature may receive as *per diem,* except when sitting in cases of impeachments, or in an extra session convened by the Governor.

Without intending to deny that there are equities in the claims embraced in this bill, sanctioned as they are by manifold precedents, I must yet adhere in the opinion that they cannot be reconciled with the Constitution."

April 16. To the Senate:

Veto of a bill entitled "An act to pay certain expenses of government." [See note 9.]

"The printed journal of the Senate which comes officially before me discloses to me the fact that the expenses of government designed to be provided for in this bill, are

expenses incurred by and for members of the Legislature, acting as such, and during their term of service. Hence the provision of the Constitution limiting the compensation which a member of the Legislature may receive,[g] seems plainly set aside by this bill, and however strong from precedent, and the unquestioned nature of the services rendered by the parties named in the bill, may be the equities of their claims, I cannot reconcile it with the Constitution."

April 18. The Legislature adjourned without day.

1858. JANUARY 5. LEGISLATURE, EIGHTY-FIRST SESSION.

JOHN A. KING, Governor.

The Legislature met on the 5th of January, and on the 6th the message was sent to the Senate, but on account of the delay in choosing a speaker, who was elected on the 26th, the Assembly did not receive the message until the 27th.

ANNUAL MESSAGE.

TO THE SENATE AND ASSEMBLY.— The circumstances in which we meet for the discharge of our respective duties under the Constitution, are of more than ordinary interest.

Towards the close of a year marked by general health, abundance and prosperity, with overflowing harvests, and a busy, peaceable and contented people, we suddenly found ourselves involved on one of those financial convulsions which seem unavoidable, and almost regularly periodical, among enterprising people, free to pursue every branch of industry.

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[g] Const. 1846, art. 3, § 6.

Confidence, the vital breath of trade, which had been so great and so unquestioning, was struck down, as it were, in an instant, and perished, and undertakings and engagements of widest reach and range, based upon its continuance, although backed by undoubted wealth and resources, were forced into liquidation. A most honorable struggle was indeed maintained by the business community against this calamitous alternative. But the banks, under ordinary circumstances the helpers of the sorely pressed merchant, became in their turn dependent upon the forbearance of their dealers, whom, in order to avoid the discreditable and dangerous resort to a suspension of specie payments, they were obliged, by constant and stringent reduction of their discounts, to disappoint of accustomed supplies. Instead of reciprocal aid and co-operation, it became a strife who could endure most and longest. The consequence was obvious. After many and disastrous failures among the merchants, the banks themselves followed, and on the 14th of October last, those of the city of New York suspended specie payments. The country banks of this State, and the banks, indeed, throughout the United States, with the exception of those of New Orleans, were swept away in the same vortex. How far, by a judicious concert of action, and more considerate watchings of the signs of the times, the banks might, by earlier adoption of restrictive measures, have averted or mitigated the calamity, or whether, when it became certain that unless the sharp and sudden contraction of the circulation, resorted to by the banks, could be arrested, and a more liberal view be made to prevail, commercial credit would be prostrated, and panic take its place, it belongs not to this place, nor to my purpose to inquire; suffice it to say, the panic came, and banks, alike with individuals, were powerless against it.

It is a noticeable characteristic of this suspension of specie payments, that it came in no sense from, and was not occasioned by, the bill holders. By the wise laws of this

State, the bills of our banks are so effectually secured, that about their essential value, if not immediate convertibility, no one had a doubt. It was the depositors that made the run upon the banks which forced them into suspension. It was the owners of the property that combined to carry it off from the depositories which they had chosen for it, and where it had ceased to represent a capital for furnishing discounts. This fact seems to point in the direction in which a preventive for the future may be found.

In the alarm and confusion consequent upon the suspension, urgent appeals were made to me to convene the Legislature, in extra session, in order that it might consider of the measures fit to be taken in such an emergency.

I listened with all respect and attention to the arguments for such a course, addressed to me by the deputations which came to the seat of government from the cities of New York and Albany; but without being moved from my early and steadfast conviction that such a step was not expedient. I had the fullest confidence, that both from an enlightened sense of duty, and from a wholesome fear of the legal consequences of prolonged suspension, the banks would make strenuous efforts to resume specie payments at the earliest day, if not unwisely harassed, or more unwisely indulged. A judicial opinion from the supreme court, promulgated in the city of New York, quieted the immediate apprehension of the banks of being forced into liquidation.* And the whole business community pledged themselves to stand by and aid, instead of crippling or annoying them. It is, therefore, with the deepest satisfaction I have found my confidence in the will and in the ability of the banks to effect an early resumption, amply vindicated by the spontaneous return to their regular course of business, of all the banks of the city of New York, on the 16th of December, within

* See Livingston v. Bank of New York (1867), 26 Barb. 304.

two months of the period of their suspension. The banks of the whole state followed the lead immediately, and those of other cities and states, with few exceptions, did likewise, and now the liabilities of the banks are redeemed on demand in coin, as quietly and surely as though no interruption had occurred.

I confess to some pride, as a citizen of the State of New York, in such an exhibition, alike of the high sense of duty, of the integrity and of the solvency of the banks, as contrasted, moreover, with the necessity which recently forced the Bank of England to ask and to avail itself of the intervention of the Government, for its relief, although armed with a defensive power, which our banks have not, of raising the rate of discount to a percentage that may become prohibitory. It is a just cause of satisfaction that our banks, partaking of all the freedom of our political institutions, after yielding for a brief space, yet, of their own motion, vigor and sense of duty, triumphed over like difficulties without aid from the Government. It would be unwise, however, to let the present opportunity pass without seeking some preventive of these periodical convulsions, so fraught with disaster, both to individuals and the public.

The effect of the recent derangement in business, has been to bring about a general settling up of accounts, and no period could, therefore, well be more propitious for the inauguration of any new provisions having for their object the greater security and steadiness of the business of banks, which combine, as ours do, the character both of banks of issue and banks of discount and deposit. With regard to the issues of the banks, I propose no change, for I perceive no necessity for any. The bank notes circulating as money, are now so well secured, and so firmly established in public confidence, that even the suspension of specie payments did not, as we have seen, sensibly affect their value, and though not at the moment redeemable in coin, they continued to

pass current as before. These derangements in the money market have their source, not in the issues but in the deposits of banks. Great competition exists among these institutions to secure large deposits at a low rate of interest. These deposits become the basis of extended and profitable discounts, thereby unduly expanding the circulation. Various expedients, more or less complicated, have been suggested to guard against this danger. But a simple and effectual course would seem to be, to require each bank to keep on hand a fixed relative proportion of coin to the total amount of its cash liabilities, exclusive of its notes, and to impose adequate penalties for the violation of this law. This would go to the root of the evil; for the cost of keeping in the vaults so much unproductive coin would be certain. There would be less desire, therefore, for large deposits; and these would be more equally diffused among many banks — of itself, an advantage, instead of being, as now, monopolized by a few. Entertaining these views, I submit, for the consideration of the Legislature, the expediency of requiring, by law, under adequate penalties, that every bank shall keep on hand twenty-five per cent. in coin, on the amount of all its cash liabilities, exclusive of its notes. In order to avoid unnecessary inconvenience in carrying such a provision into effect, it might be so graduated as to time, as to reach the minimum by a progressive monthly percentage; but whenever reached, at a day to be fixed, not to be departed from. Under a law similar to this the chief banks of New Orleans, alone of all the banks of the country, were enabled to resist the pressure of universal suspension elsewhere, and maintain their integrity. Such a law in this State, together with the weekly statements, under oath, of the New York city banks — now so judiciously required to be published — and the operation of the daily settlements at the clearing house, would, it is believed, go very far to prevent catastrophes such as that

from which we are just emerging. I can perceive no objection, in expediency or equity, to such a restriction upon the banks, which, as creatures of the State, may and should be required so to conduct their operations as that the public safety should not be postponed to the desire of adding to the profits of their private stockholders.

The condition of the banks, in all of these details, will be communicated to you at an early day, by the Superintendent of the Banking Department, to which I would beg leave to refer you for such further information as you may desire upon these subjects.

The condition of the finances of the State is such as to require, I am concerned to say, continued taxation, in order to the maintenance of the public credit, and the due provision for the ordinary expenses. The canal revenues are again deficient, and it becomes a duty to express the opinion that under existing circumstances, the Legislature may, with equal fitness and justice, repeal the law of the 10th of July, 1851, entitled "An act to abolish tolls on railroads," and then, by a further act, re-establish the tolls on competing railroads, which had been pledged by the Constitution, as part of the canal revenues, for the security and ultimate redemption of the public debt.

Railroads are great public benefits, and there should be no desire to deal in an illiberal spirit with their owners and managers. It is for the general safety and convenience, that those who invest their money in such enterprises, should be permitted to derive therefrom a just return of profits, but always in subordination to the public good and the rights of others. It is in this view I recommend, as an equivalent for re-establishing the tolls on freight, that railroad companies paying such tolls, be permitted to make such equitable increase in their present charges for the transportation of passengers as the Legislature may authorize.

There will doubtless be addressed to you applications for grants of money to various deserving enterprises and institutions; but it is my duty to say that, in the present condition of the treasury, a deaf ear should be turned to all such applications; for it can only be through the exercise of the strictest economy, and retrenchment wherever retrenchment can properly be made, that we shall be able to meet our ordinary expenditure, and to fulfil our obligations to those State institutions which habitually rely upon our annual appropriations.

The reports annually presented to the Legislature, will make known to you the general condition of the State, of its eleemosynary institutions, of its houses of refuge, its prisons and penitentiaries, and to these I refer without reproducing their statements here.

The Superintendent of the Onondaga salt springs reports to me that the inspection of salt manufactured on the Onondaga salt springs reservation, during the past year, is 4,312,000 bushels. This is a falling off of the production of the preceding year of about 1,700,000 bushels. The Superintendent ascribes this falling off to the recent general derangement of business in the country; but expresses the confident belief that this important staple will speedily recover from its depression, and go on, as heretofore, with steady increase.

Of the canals, however, I must speak at some length, and with entire frankness, not concealing whatever there may be of disappointment and discouragement in the statement to be made, but as certainly not doubting nor desponding, either as to the ability, the obligation, or the expediency of persistent efforts and sacrifices, if need be, speedily to complete the enlargement; and therein and thereby put the State in possession of a system of internal navigation, unsurpassed in its extent and completeness, and unequalled in its productiveness. The net tolls of the past year, ex-

tending from 1st October, 1856, to 1st October, 1857, fall short, as appears by the annexed abstract from the report to me, of the Auditor of the Canal Department, by $110,-984.40 of the sum of $1,700,000 required by the Constitution to be annually set apart from the surplus revenues of the canals, as a Sinking Fund for the redemption of the canal debt, as it existed in 1846. The Constitution further requires that $350,000 be annually set apart from the surplus funds, to provide for the interest and principal of the General Fund Debt. This also is deficient, thus making the whole deficit of the tolls to satisfy the requirements under 1st and 2d sections of article 7 of the Constitution, $461,984. The work of enlargement has, it is believed, been advantageously and steadily prosecuted during the past year, though I am unable to furnish you with any details. These will be presented to you in the report which the State Engineer is preparing, and will make to the Legislature at an early day. Assuming, however, as accurate, the estimates in his annual report of the cost of completing the enlargement

from 1st December, 1853, at.....		$14,250,000.00
And giving credit for the sums since appropriated thereto, viz, amount of four loans of $2,250,000 each, under constitutional amendment of 1854.....	$9,000,000.00	
Premium thereon, and interest on premium.....	1,400,000.00	
Proceeds of mill tax, per law of 1857	1,350,000.00	
		11,750,000.00
Leaving deficit		$2,500,000.00

To meet this there is only the loan of $500,000 authorized by the last Legislature, not yet negotiated. It will devolve upon you, therefore, to provide the additional means. I have already suggested, that tolls on competing railroads be restored, and would further suggest as an additional resource, such increase of canal tolls as may be found expedient, and for the balance, we can only look to direct taxation; and accordingly, I recommend that recourse be had thereto, in such measure, and with such apportionment of the burthen over two years, as will render it least onerous to the people, while fulfilling the end proposed, of ensuring the speedy enlargement. That result, if adequate means were on hand, might be accomplished within the current year; but inasmuch as no such means can be provided within that time, we must be content to wait a little longer for this great consummation, well assured that when it does come, it will come crowned with abundant and lasting prosperity. Meantime it may be safely estimated that, with the tolls on competing railroads, and a tax of one-half mill annually, for two years, a sufficient sum will be raised to effect the desired object, and thus at the commencement of the year 1860, put the State in possession of this great property, with a sinking fund adequate to the rapid extinction of all the debts charged upon it, and with an income that will thenceforth obviate the necessity of taxing the people.[1]

The Superintendent of Public Instruction has furnished me in anticipation of his annual report, with the following statement of the condition of the public schools of the State:

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[1] The Legislature adopted the Governor's suggestion as to a one-half mill tax for the canal debt, which was imposed by chapter 353, passed April 17. Other canal legislation was of the usual character, providing for enlargement, improvement and ordinary administration.

The reported expenditures for the public schools of the State for the year 1856, are:

For teachers' wages	$2,033,268.44
For libraries and school apparatus	120,896.43
For school houses, including sites, repairs, &c.	746,092.24
For incidental expenses	399,641.82
Total	$3,299,898.93

Of the above total amount there was raised, by school district tax and rate bills	$2,181,274.05
From proceeds of Gospel and School lands	16,054.31
From Common School Fund and State tax.	1,102,570.57
	$3,299,898.93

The number of school districts reported in the State, is 11,857.

The reported number of persons between the ages of four and twenty-one years, is 1,214,771; of whom there were in attendance, some portion of the year, in the public schools, 832,735; 69 per cent of the whole. The cost per month, of each pupil actually attending school, was 84½ cents.

The cost of the public schools, apportioned *per capita,* on the whole population of the State, exclusive of the invested school funds, was 93 cents and 7 mills.

The law under which the military force of the State is at present organized, can hardly be said to answer generally the requirements of the force, nor even, in some essential particulars, is it to be considered as accomplishing the objects sought to be secured by its provisions.

In establishing the present commuting system, the Legislature doubtless intended it as a means by which the pecuniary burthens of the military organization might fall less

grievously upon those included within its authority; nor is it any less certain that it intended that the commutation should be properly assessed and collected; but owing to defects in the law itself, and to the mode in which it is administered, the funds arising out of this system are by no means as large as it was reasonable to expect, and in this regard at least, it may be truly said that the law has failed in accomplishing one of its vital objects. Indeed, so generally is this the case, that in many of the military districts of the State, the expediency has been urged of abolishing altogether, the commuting system, and establishing in lieu of it a direct tax upon property.

It is believed, however, that by a modification of the manner in which the enrolment is effected, and by providing against the accumulation of the commutations of successive years, the commuting system will become as effective as it is desirable.

I would call your attention to this defect in the law, and generally to the suggestions contained in the report of the Adjutant General.

The military force of the State is divided into 8 divisions, 28 brigades and 67 regiments, comprising in the aggregate 16,434 officers and men, and is classified by companies in the various arms.

It will be, perhaps, remarked that the number specified as the aggregate of the force, is somewhat less than that stated last year. This arises from the fact that the aggregate of last year was derived from calculations based upon partial returns; this year, however, the returns have been unusually full and accurate, and it is believed that the number now specified as the aggregate of the force cannot vary much from the fact.

I have had opportunities during the past year, to witness, personally, both in the city of New York and in some of the interior cities and counties, the soldier-like bearing and appearance of the uniformed troops, and I look on

such an organization, only kept up, as it is, at a very considerable indirect cost, as an honor and defence to the State, and worthy, therefore, of legislative encouragement.[2]

I took occasion to submit to the last Legislature the urgency of some more adequate provision than now exists, for securing and protecting both the freedom and the purity of the elective franchise, especially in the large cities. I now suggest, as at once constitutional and effective, the enactment of a registry law, whereby the rights of every elector may be ascertained in advance of the heat and confusion of election day, and fraud, simulation and perjury be rendered measurably unavailable at the polls.

Much time was given by the last Legislature to framing laws for the city of New York; and it affords me pleasure to say, that all of them have, by their operation, thus far vindicated the wisdom with which they were framed and enacted. Of the law establishing a municipal police, though most factiously resisted, and so far, therefore, deprived of its efficiency, the experience has been satisfactory. And I look forward, with confidence, to the complete organization of the force under this law, as promising to the metropolitan district to which it applies, a most efficient, reliable and respectable police. If it shall be found that additional legislation may hasten such a result, it will, I trust, not be withheld. I communicate herewith, for your information, a report of the Police Commissioners which, in conformity with the law, they have made to me.

The law to reorganize the Warden's office of the port of

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2 Chapter 129, passed April 8, "to improve the discipline and promote the efficiency of the military forces of the State," required an instructor in artillery and also one in cavalry in each military division. Such instructors could only be appointed after an examination by a board of military officers. The act also contained other details relative to the militia.

Chapter 343, passed April 17, was a local act applying to Troy various provisions of the militia acts of 1854 and 1855.

The Legislature also passed concurrent resolutions, urging federal legislation providing for more and better arms for the state militia, and for the improvement of the organization and discipline of the militia.

New York, is among those of the last Legislature which has been most earnestly resisted, as oppressive and unconstitutional. It seems to me, however, just in principle, fair to all parties liable to be affected by its provisions, either as ship owners, shippers, insurers, or consignees, at home and abroad. The duties under it have been faithfully and intelligently discharged, and at a moderate cost.

The law for the removal of quarantine from its present site has met with unexpected obstructions, of which the details will appear from a report to me of the commissioners, accompanying this message. I indulge the hope that the State of New Jersey, to which we are bound over and above the common bond of union as an equal member of the Republic, by special ties of neighborhood, interest, and close social and domestic relations, will, upon a review of the whole case, forego her objection to the use of the barren sand-spit of Sandy Hook, as a Quarantine station, and thus cement more closely, by such a concession to the common health of the people of both States, our respect and affection.

With respect to the concurrent resolutions of the last legislature, proposing an amendment of the Constitution in relation to the suffrage of men of color, and also an amendment to prevent frauds at elections, I have to state that, in the hurry of business, towards the close of the session, these resolutions were inadvertently sent to the Executive Chamber, among many other bills, and not requiring, as those bills did, the signature of the Governor, they were laid aside, and not being called for by the proper officer, they were overlooked, and so failed to be published according to the provision of the Constitution. I now call your attention to the fact. Concurring entirely in the policy of these resolutions, I invite your consideration to the propriety of re-enacting them.

It is known that in the month of July last, the center building of the State Lunatic Asylum at Utica, together

with some of its outbuildings, was destroyed by fire, which was ascertained to be the act of an incendiary, partially deranged. On consultation with the board of managers, and being satisfied, by personal inspection, of the absolute necessity of immediately repairing the damage, I authorized them to do so, upon the most advantageous terms consistent with economy and dispatch. Upon this authority, they proceeded at once, and, up to the present period, they have made an expenditure amounting to $41,005.51; and the sum estimated as needful for work yet to be done, is $27,786.43, making the entire amount $68,741.94, for the reconstruction of the buildings destroyed, with some improvements deemed valuable and necessary. In assuming the responsibility, without warrant of law authorizing this expenditure, I was actuated by considerations of the overruling necessity of the case; for the operations of that noble charity were paralyzed by the destruction of so much of the edifice; and the forlorn and helpless inmates would have been left without adequate care and protection. I throw myself upon the indulgence of the Legislature in asking their sanction to this course, and that an appropriation be made for the sum above named. I submit, herewith, the report of the board of managers of that institution, setting forth the urgency of this expenditure, and its details, and explaining the actual workings of this charity.[3]

As connected, in some degree, with the same subject, I take leave, at the request of the board of supervisors of Monroe County, to invite your attention to the condition of the insane paupers in the several counties of this State, and particularly in the county of Monroe, now supported as a county charge; and also as to the policy of erecting and maintaining county asylums or hospitals for the insane paupers, in connection with the almshouses and poor houses

[3] An appropriation for the expenses incurred in rebuilding a part of the State Lunatic Asylum destroyed by fire, as stat d in the Governor's message, was made by chapter 28, passed March 6.

of such counties, and under the same general superintendence. That communication on this subject is herewith transmitted, which explains their views more fully.

The sum of $25,000 appropriated by the last Legislature for clearing out obstructions in the Hudson River, near the city of Albany, has been judiciously expended, and, as far as the means would allow, to a good result. As it is obviously and unquestionably a duty of the general government to provide for expenditures of this sort in navigable waters, constituting a port of entry, it will be for you to authorize the proper reclamation on that government for the reimbursement of the amount expended, and for such further aid as may complete the work of removing obstructions.

As belonging to the same subject, I may add here, that the lines established by the Commissioners on Harbor Encroachments in the port of New York, being once definitely settled by the labor of an accomplished corps of hydrographers, and adopted by the Legislature at its last session, at great cost to the State, it is obviously for the interest of all riparian owners, as it is for the permanent advantage of navigation, that this result should be deemed final, and that the lines thus established should be considered as unalterable.

It cannot have escaped your notice that during the past year some of our courts of law have, by a most extraordinary exercise of the power of granting injunctions, introduced an element of discord, and, therefore, of weakness and distrust, into our judicial system. The injunction is a process unknown to the common law. According to that law every man is free to act on his rights, as he is advised they are, subject to answer in damages to any one whose rights he may invade. Equity comes in, where the act threatened to be done would cause a damage, in its nature irremediable, or where the trespassing party is irresponsible, and enjoins him; but, as now practiced, our judges, in

a discretion not always wisely exercised, have nearly converted into an every-day remedy, what is designed, and has heretofore been regarded as an exceptional intervention of equity, staying, in such cases, the extreme rigor, or supplying the deficiencies of the common law. The evils of such proceedings, in relation to individuals, assume far greater proportions when they are brought to operate on public interests, and have reached such a pass in the city of New York, that it has become a common practice for the judiciary, acting preliminarily and without the defensive precautions of a regular trial at law, to interfere with the action of public officers, alike of the municipality and of the State. The effect is to constitute the judiciary an integral part of our municipal and State government by their own act, not judging on regular proofs according to the common law, with its wise rules of evidence, its confronting of witnesses, and its sober delays for reflection, but on the urgent impulses of agitated parties, moved by the outcries of masses, and it is feared not entirely free from the influences of party and partisan strife. How great this evil became, how it impaired confidence in the judiciary, how dangerous it was to the public, the events of the past year have plainly shown. To remedy this state of things, it is suggested that it be provided for the future:

1. That no injunction be granted *ex parte*. This I understand to be the law in the courts of the United States, and that it has been found to work well. Notice being always required, so that the other party can make his statement.

2. That no injunction be granted, except where the injury apprehended would be irreparable, and could not be compensated in damages, or when the apprehended wrongdoer was insolvent.

3. Security might be required for the payment of damages to the party enjoined, in case the process should appear to have been improperly obtained.

These provisions should be applicable to all demands for an injunction; and, in addition, in the case of public officers, whether of the State or the municipality, it might be further required that

4. The jurisdiction, as to public officers, should be confined to a single court, so as to avoid a conflict of jurisdiction and of opinion.

5. No injunction to be allowed, as to any public matter or public officer, but on a hearing before a general term, from which an appeal should lie immediately to the Court of Appeals.

Some such provisions as these, with such details as may be found advisable, seem to me indispensable for restoring the impaired confidence of the people in the judiciary, as well as for restraining that most essential and valuable department of polity within its proper and prescribed limits. It will be all the stronger, in real authority and in moral weight, by being thus restored and restrained.

I cannot pass from this subject without calling your attention to some other points connected with it; and, first, as to the mode of ascertaining and declaring the result of the election of judges. The choice in these elections is, as in respect of other elective officers, by pluralities; but no commission is issued to the elected, and they enter upon and hold office under a mere canvasser's certificate. In case of a doubt or dispute, no magistrates are authorized to determine the *prima facie* title.

It would seem not unreasonable, with regard to such important officers, chosen for a long term of years, if only to guard against surprise, that something more than a mere plurality — some appreciable and significant proportion of all the votes cast at such election — should be required as necessary to a choice, while both dignity and responsibility would seem to demand that every incumbent of a seat on the bench of the State, should be provided with a commission under the seal of the State; and, in local tribunals, from some court of record.

Again, the laws, as administered in criminal cases, do not appear to discriminate sufficiently between degrees of criminality, or do not leave a sufficient latitude for doing so to the judges. Hence, constant appeals to the Executive for the interposition of his prerogative of mitigating sentences. The listening to and determining of such appeals, is among the most laborious and most painful duties of the Executive; yet a duty fully assumed, with all others belonging to the office, and not, therefore, to be shrunk from. But if it should appear to you that the cause of justice as well as of humanity might be promoted by allowing criminal courts a wider latitude in the application of specific penalties to specific offences, I willingly persuade myself that it might be an additional motive for adopting such a course, that it would, in the future, relieve measurably the Executive of the State from these most painful and yearly accumulating applications.

The gold medal voted to Dr. Kane had not been completed when the sad intelligence came to us of the sudden death, in a foreign land, of him whom the Legislature of this State designed to honor. It has since been delivered, by my private secretary, to the father of Dr. Kane, the afflicted inheritor of the well earned trophies of a gallant son, too early lost.[4]

The medal voted to Commander Hartstene is in readiness to be delivered to him at the Capitol, whenever his public duties will permit him to attend and receive it, of which he has been officially advised.[5]

The condition of Kansas continues to absorb public interest. It is to the shame of Truth alike and of Liberty,

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[4] Dr. Kane died in the city of Havana, Cuba, on the 16th of February, 1857. Afterwards on the 27th of February, and the 3d of March, the Assembly and Senate respectively adopted resolutions appropriate to the occasion and deploring the death of the great explorer.

[5] This medal was ordered by the Legislature of 1857 by resolutions thanking Lieutenant Hartstene for his patriotism, courage, seamanship and good will, in volunteering to make a voyage to the North Seas in search of Dr. Kane and his party.

that it must be said, that in the treatment of this question there has been studied disingenuousness and deliberate perversion of facts. Even the President of the United States,* after having pledged himself, as the party he represents had pledged themselves, that no Constitution should be deemed obligatory which had not been submitted to the people for ratification; and still professing to uphold and stand by what it so delusively characterizes as popular sovereignty, nevertheless affirmed, in his message, that it has "been fairly and explicitly referred to the people whether they will have a Constitution with or without slavery," while in that same message it is stated that slavery, and the right of property in slaves, exist in Kansas "under the Constitution of the United States," and when by the very form in which the question is submitted, the Constitution, recognizing the existence of slaves, must be accepted, whatever the vote or the wishes of the people as to slavery may be. What grosser mockery of substantial popular sovereignty can well be devised, than the submission of only a single section of a Constitution, involving all the rights and the liberties of the people? And what more palpable abuse of language than to speak of such a submission as "fair?" Of what free State in this Union would the people submit to be thus cheated of their right to decide upon a Constitution in all its parts? Or what theory of freedom can consist with such a dishonest scheme for forcing an obnoxious instrument upon an unwilling people?

In view of these most unwarrantable proceedings, and after emphatic and repeated declarations by the President of the United States, and after the yet more extraordinary opinions, not judicial decisions, nor entitled to any respect as such, pronounced by some of the Justices of the Supreme Court of the United States as to the constitutionality of slavery, I feel called upon by what I owe, not less to the well-ascertained sentiment of the people of this State, than

* James Buchanan.

to my own self-respect, to repeat here, what in my first message I assumed as the deliberate conviction of the free States, that "slavery in the States where it exists, exists by virtue of the local law alone, and that it neither exists nor is confirmed there, nor anywhere, by the force and effect of the Constitution of the United States."

I have faith in the principles at issue in this controversy so strong as to feel assured that the freemen of Kansas will not submit to the great wrongs meditated against them; and my faith is alike strong that the men of the free States will sustain the cause of freedom of Kansas as though it were their own, and at their own doors.[6]

Since the last session of the Legislature the Lemmon slave case, involving the claim of slaveholders to bring slaves into this State, in violation of its express legislation, has been brought under the consideration of the Supreme Court of the first judicial district.

The case was heard before the five judges of that district, and I am gratified to be able to state that, with one dissenting voice, the court expressed its judgment in favor of the constitutional power of the State to legislate as to the condition of all persons within its jurisdiction, and to banish forever from its territory all vestige of human slavery. The dissenting justice has not made public the grounds or the extent of his disagreement with the majority of the court.

The counsel of the State of Virginia, having intimated his intentions to appeal from this decision, I recommend to the Legislature to make such provision for the further maintenance of the rights of the State, as the importance of the question requires.[7]

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[6] The Legislature in March, adopted a concurrent resolution, declaring that "the state of New York is opposed to the admission of Kansas into the Union as a state, with the constitution, commonly known as the 'Lecompton Constitution,' or any other Constitution, which shall not have been in all its parts fairly submitted to the legal voters of the territory, and received their sanction and approval."

[7] The general appropriation act, chapter 328, passed April 17, authorized

I have thus frankly communicated to you my views on the great public interests committed to our common charge. The path before us is plain, though not free from difficulties and embarrassments; but looking with a steadfast eye to duty, and relying with steadfast hearts upon the continued aid and guidance of that gracious Being, who, in the past, has in so signal a manner, blessed our people, we cannot mistake, and must not suffer ourselves to be diverted from it.

JOHN A. KING.

Albany, January 5th, 1858.

SPECIAL MESSAGES.

February 2. To the Assembly: Transmitting the annual report of the Adjutant General for the year 1857.

February 11. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *Feb.* 9, 1858.

"I transmit herewith the report of the commissioners appointed under the act entitled 'An act for the appointment of a commissioner to secure the most perfect establishment, government, regulation and economy of common schools, in the city of New York, passed April 7th, 1857,' with the documents that accompany the same.

The commissioners ask for further time, in order that they may complete the duty assigned to them, by presenting a bill which shall embrace the necessary changes in the school laws of the city of New York. Concurring in the opinion, I respectfully recommend that the commissioners be continued for a longer period.[8]

JOHN A. KING."

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the payment of $2000 to counsel in the Lemmon slave case, and $500 for expenses incurred by the attorneys. See 1855, note 15, for a statement of the result in the court of appeals.

8 By chapter 198, passed April 14, the commission appointed to revise the school laws of the city of New York was continued in office until the 1st of January, 1859.

February 17. To the Assembly: Transmitting the annual report of the inspector general.

March 10. To the Assembly: Transmitting the report of the Commissioners for the removal of the quarantine, with accompanying documents. [See assembly document No. 69.]

March 10. To the Assembly: Transmitting a communication from the mayor of New York relative to the transactions in that city of the United States loan commissioners, with the recommendation by the Board of Supervisors that the compensation of the Commissioners be increased to the amount allowed to the Commissioners in Oneida county.

April 17. To the Assembly:

Veto of a bill entitled "An act to amend 'An act to incorporate the New York and Harlem Railroad Company,' passed April 25th, 1831, and the acts amending the same."

"1st. It encroaches upon the province of municipal rights, and takes a strip of one of the public avenues out of the necessary municipal control.

2d. It impairs the plainest obligations of a solemn contract, absolving the railroad company from further observance of the covenants on its part, while it retains and enjoys the whole consideration on which they were entered into."

The bill was not passed over the veto.

April 19. The Legislature adjourned without day.

EDWIN D. MORGAN, Governor.

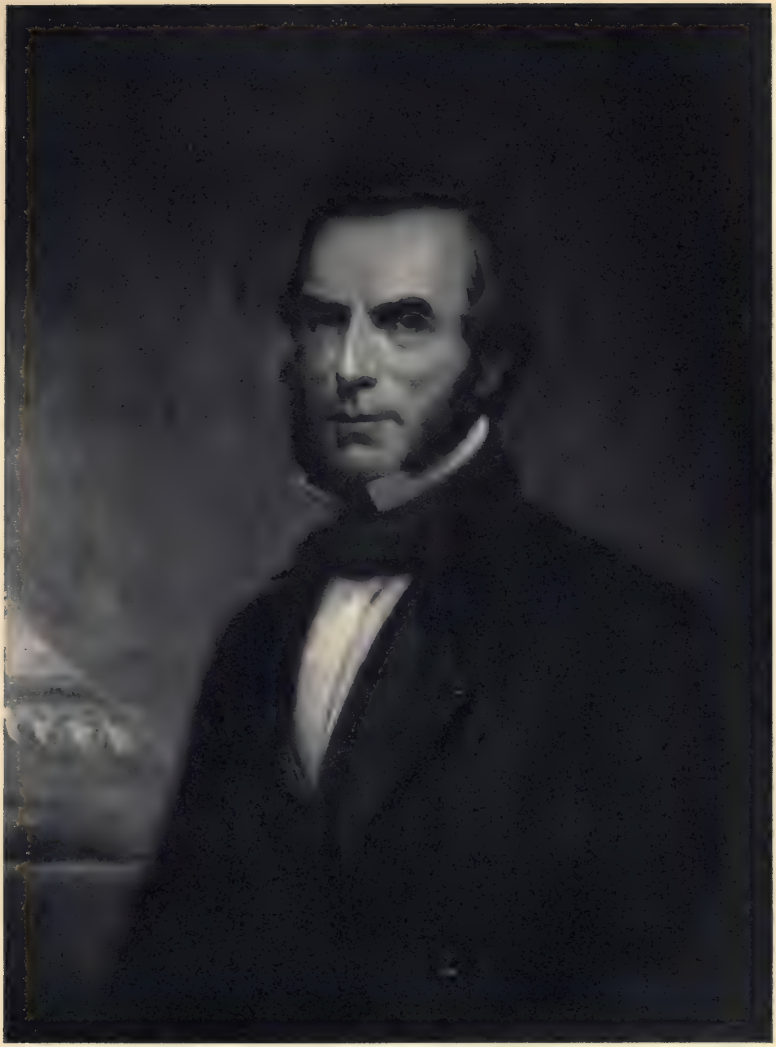
ANNUAL MESSAGE.

To the Senate and Assembly.—I enter upon the discharge of the duties which the People of this State have committed to me, with less of political experience than many of my predecessors in this high station, and with some anxiety for the result. Upright intentions, a heart devoted to the interests of the Commonwealth, and unceasing application, are all the pledges I can give for the faithful execution of the trust delegated to me by the People of New York. Under such circumstances I cannot hesitate in this, my first communication to the Legislature, to invoke the presence and aid of that Almighty Being who controls the Councils of Nations, as well as the affairs of individuals, that he will enable every person employed in the administration of the State to execute successfully the duties of his station.

The Constitution makes it the duty of the Governor to "communicate by message to the Legislature at every session, the condition of the State, and to recommend such matters to them as he shall judge expedient."

In conformity therewith, and as first claiming your earnest attention, I proceed to apprise you of the financial condition of the State, that you may early know of the necessity which exists for supplying its Treasury.

The Funded Debt, on the 30th September, 1858, was $30,913,258.77; of which $6,605,654.37 was the General Fund State Debt, and $24,307,704.40 was the Canal Debt. Of the General Fund State Debt $350,000 becomes due in 1859, and $450,000 becomes due in 1860. There is also a Contingent



E. O. Morgan

Debt for stock issued to certain railroad companies amounting to $570,000.

The Constitution disposes of the revenues derived from the Canals annually,[a] in the following manner:

1st. To pay the expenses of collection, superintendence, and ordinary repairs, which the Commissioners of the Canal Fund in their report to the Legislature on the 18th of February last, for the last fiscal year, estimated at $1,000,000.

2d. To pay the interest and provide a Sinking Fund to pay the principal of the Canal Debt, as it existed on the 1st of June, 1846, including $300,000 then to be borrowed, $1,700,000.

3d. To pay the interest and provide a Sinking Fund to pay the principal of the General Fund Debt, $350,000, until old Canal Debt is provided for, and then, for the same purpose, $1,500,000.

4th. To pay interest, and provide a Sinking Fund to pay new Canal Debt in eighteen years, which debt now amounts to $12,000,000, and will require for interest, annually, $710,000.

5th. For the support of government, $200,000.

6th. The remainder to be expended every year upon the canals until they are completed, and after that, as the Legislature may direct.

The whole amount of receipts from tolls, rent of surplus waters, and interest on current canal revenues during the year ending September 30, 1858, was $2,072,204.88, viz:

From tolls:		
Erie canal	$1,791,527.98	
Champlain canal	90,486.10	
		$1,882,014.08
Oswego canal		83,939.46
Cayuga and Seneca canal		14,400.67

[a] Const. 1846 art. 7, §§ 1, 2, 3, am. 1854.

Chemung canal	$13,347.95
Crooked Lake canal	520.82
Chenango canal	15,305.64
Black River canal	4,998.48
Genesee Valley canal	25,651.07
Oneida Lake canal	1,235.32
Baldwinsville canal	14.13
Oneida River improvement	3,725.19
Seneca River towing path	99.69
Cayuga inlet	190.18
	$2,045,442.68
From rent of surplus waters	1,948.33
From interest on current canal revenues	24,813.87
	$2,072,204.88

The payments during the year for superintendence, and ordinary repairs, collection of revenue, salaries chargeable to the Canal Fund, and miscellaneous payments, have been $1,078,878.91, " surplus revenues," $993,425.97.

It will be thus seen, that for the last fiscal year, after paying the expenses of collecting, superintendence, and repairs, chargeable upon the canal revenues, there is a deficiency of $706,574.03 of the sum needed to pay the interest, and provide a " Sinking Fund," to meet the first constitutional requirements of $1,700,000. The interest upon the canal debt alone is annually $1,358,892.30. The interest upon the General Fund debt is annually $354,606.10. If the entire surplus revenue from the canals was now to be appropriated to the payment of interest on the canal debt, there would be a deficiency of $365,466.33. If the General Fund debt should be included, there would be a deficiency of $712,710.74, to be provided for in some other manner. From a statement made to me by the Auditor of the Canal

Department, it appears there have been drafts made by the Canal Commissioners, up to the 30th September, 1858, for $1,330,033.30 beyond the ability of the treasury; none of which have been paid; and that the amount of these drafts will, in the opinion of the Auditor, by the first January, 1859, reach $1,700,000. From another source, the estimate for the same period and for the same object, is $2,000,000. To meet the claims upon the treasury, actual and estimated, which relate to the canals alone, the following sums will be required:

To pay outstanding drafts for work done on the canals, and awards for land damages, (partly estimated,).....	$1,700,000
For one year's interest on the debt of $12,000,000, contracted under section 3, of article 7, of the Constitution.....	710,000
For the principal and interest on the temporary loan of $200,000, due 1st July, 1860...	220,000
Estimated amount required, under the act chapter 263, of the laws of 1858, to pay interest on drafts and awards, the principal of which was liquidated at the department, prior to April 10, 1858.....	25,000
Total.....	$2,655,000

equivalent to a State tax of nearly two mills on the dollar of the valuation of 1857.

The above estimate of twenty-six hundred and fifty-five thousand dollars does not include all the damages for land taken for the construction and enlargement of the canal, which it is supposed will require $1,000,000 additional; and that $500,000 will be required to pay the fifteen per cent reserved out of estimates of work done under contract.

If these figures prove to be correct, obligations to the amount of upwards of $4,000,000 already exist against the

State for the canals alone, (without any estimate for work yet to be performed in the completion thereof,) a large part of which obligations have been created regardless of that part of the Constitution which provides, that "no debt shall be hereafter contracted, by or on behalf of this State, unless such debt shall be authorized by a law for some single work, or object, to be distinctly specified therein, and such law shall impose and provide for the collection of a direct annual tax, to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of contracting thereof."[b]

Thus, without the power to create a debt, unless first submitted to the people, a debt has been created for canal purposes, without the means of payment in the treasury, or at the command of those who made it; and it requires your early and deliberate consideration as to the measures necessary, and proper to be adopted, to save unimpaired the public faith; for under no circumstances will the State of New York ever refuse to acknowledge and pay, any and all just claims that exist against her, or that may have been contracted by any of her authorized agents. I regret the necessity for this exhibition of the financial affairs of the State, wherein is shown a floating indebtedness of such magnitude; but justice to a Legislature that will be expected to provide for its extinguishment, requires that it should be stated.

From information derived from the State officers, I am led to believe that one million of dollars for the Erie canal; six hundred thousand dollars for the Oswego; two hundred thousand dollars for the Cayuga and Seneca; and three hundred thousand dollars for the other canals, would essentially complete our system of canal enlargement, except for a portion of the Erie, where remain what are called wall benches, on which the slope or protection wall is built to

[b] Const. 1846, art. 7, § 12.

secure the inside bank of the canal. The removal of these has been recommended in former official reports, but it will not be necessary for the immediate purposes of navigation.

I am also informed that very essential advantages can be attained by deepening the whole of the channel of the Erie canal to seven feet, and by leaving the width of the small portion yet remaining to be widened at forty-five feet.

The cost of this partial enlargement is estimated for the Erie canal at three hundred thousand dollars, in which would be included twenty-five thousand dollars for deepening the present channel through the Cayuga marshes. The further sum of one hundred and fifty thousand dollars would deepen the Oswego canal to six feet. Both these sums can be expended before the opening of navigation in the ensuing spring.

Another mode of prosecuting the public works has been suggested, namely: to secure six feet of water on the Erie, Oswego, and Cayuga and Seneca canals, and to proceed with the permanent work across the Cayuga marshes during the ensuing winter, all of which it is estimated will cost five hundred thousand dollars:—and then to provide for the final completion of the canals by the spring of 1860.

I deem it vastly important that our system of canal enlargement should be pushed to a speedy completion, especially when the amount required is so small, compared with the millions already expended. No other means of transportation through our State can compete with the Erie canal, particularly when, by its adaptation to the purpose, steam shall be successfully applied in its navigation; and I cannot too strongly urge upon the Legislature the necessity of devising ways and means to accomplish so desirable and necessary a result. If at this time no other obligations of the State were claiming your immediate attention except its funded debt, and the interest thereof, the sum required for necessary construction upon the canals could and would be raised by means of a tax upon all the

real and personal property of the State; the honest and conservative method of paying for necessary objects of this kind, and which I believe the people of New York are sufficiently ready and willing to bear, provided they can have reasonable assurance that the proceeds of taxes thus levied and collected will be honestly and wisely applied to the object in question. In view, however, of the erroneous estimates of the cost of the canals, and of disappointed expectations in regard to the time of their completion, your position, in authorizing new expenditures even for so indispensable an object, is one of trial and responsibility. But we cannot avoid, and should not shrink from the discharge of an imperative duty.

Having thus given such information as in a brief period I have been able to obtain in relation to the amount of obligations already created for canal purposes, as well as approximate estimates for construction, both for the complete and for the partial enlargement, I leave the matter where it belongs, with an assurance that you will not fail to provide the treasury with means to meet these requirements upon it. Any proper enactment having that object in view, will receive my approval, whether it seek to attain the object by a moderate tax spread over a term of years, or by an amendment of the Constitution, or by obtaining the popular approval to a loan under the Constitution, or by such other course as you may devise for the temporary or permanent increase of the revenue.[1]

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[1] Chapter 149, passed April 6, imposed a tax of five-eighths of a mill, the proceeds of which were to be placed to the credit of the canal fund, and the act appropriated various sums for the enlargement, improvement and completion of several canals.

Chapter 221, passed April 11, made appropriations for canal administration, and supplied deficiencies in former appropriations. Chapter 271, passed April 13, authorized a loan of $2,500,000 for eighteen years to raise funds to be used in the payment of claims against the State for work done on the canals, or for private property appropriated for canal purposes, or for injury to private property growing out of the construction of the canals, or to the payment of the principal and interest on such loan. The act was submitted to the people and approved at the November election in 1859.

The cost of the construction of the canal basin at Buffalo has always been kept as a separate item upon the books of the Canal Department, because it was considered just that the money so expended should be reimbursed by the United States. The Canal Board have very recently memorialized Congress for the reimbursement of this money and for the repair and improvement of the piers at Buffalo and Oswego. The facts stated in the memorial leave no doubt of the justness of these claims.[2]

The receipts on account of the General Fund during the year exceeded the payments from the fund	$393,241.94
From which deduct the deficiency in the revenue, as stated, for the previous year	84,702.59
And it leaves an apparent balance in the treasury of	$308,539.35

But as a large portion of the appropriations of 1857 remained unpaid on the 30th September last, there was an actual deficiency in the revenue to meet the demands upon it of $460,000.

The General Fund no longer receives contributions, as formerly from the "surplus revenues" of the canals, and

Chapter 326, passed April 14, reappropriated unexpended balances under former appropriations for enlargement and completion of certain canals. Chapter 88, passed April 1, initiated the project for an extension of the Chenango canal to the Pennsylvania State line near Athens.

2 The Legislature adopted a concurrent resolution in January, approving the memorial by the Canal Commissioners "requesting payment of the moneys advanced from the canal revenues of the State for the construction of the breakwater in the harbor of Buffalo," and also the memorial "petitioning the general government to enlarge, improve and protect all the harbors on the chain of lakes serving as ports of shipment for property destined for the canals of this State."

its permanent revenue is very inconsiderable, viz., for the year ending September 30, 1857:

Auction duty	$132,220.22
Salt duty	53,476.91
Fees of the Secretary's office	2,739.52
Fees of the Comptroller's office	2,612.11
Fees of the Clerk of the Court of Appeals	506.93
Pedler's licenses	1,000.00
Total, as shown by comptroller's report,	$192,615.49

This fund has, for several years, been supplied by means of a direct tax, and such tax will again become necessary in order to pay the deficiency which now exists, of $460,000; and also to make the usual appropriations for the next fiscal year for the expenses of government, and for other purposes, in pursuance of article 7, section 8 of the Constitution, and the existing laws. It is to be borne in mind that any law which may be passed imposing such tax, should embrace whatever other appropriations the Legislature, in its wisdom, may make during the present session.

The expenses of the State Department, of the Legislature, of the Judiciary, and of the Prisons, must be paid; while the Houses of Refuge, the Lunatic Asylums, the Institutions for the Blind, for the Instruction of the Deaf and Dumb, and the Asylum for Idiots, are "Children of the State," and imperatively require its support.

Applications will doubtless be made for other objects of acknowledged merit, which you will feel constrained to refuse.

Hospitals, Orphan Asylums, Dispensaries, Medical Schools and Juvenile Asylums, heretofore recipients from the treasury, are not all in a condition to be denied the usual stipend.

These, and all like appropriations, if made, are to be paid from the General Fund, the State tax to supply which, has, for the last ten years, produced the following amounts:

1848, one-half mill	$325,638.72
1849, one-half mill	334,555.96
1850, one-half mill	364,003.75
1851, one-half mill	578,546.88
1852, one-fourth mill	292,641.69
1853, one mill	1,285,124.88
1854, three-fourths of a mill	1,020,926.49
1855, one and one-fourth of a mill	1,751,717.78
1856, one mill	1,430,000.02
1857, one and one-fourth mills	1,789,875.22

The deficiency in the General Fund, the large "floating debt" of the Canal Department, for the payment of which the State must provide, the necessary funds required for the completion of the canals, which you are prohibited by the Constitution from borrowing, except under circumstances that at best can be made to apply but to a portion of the aggregate amount, will indicate the necessity for economy and retrenchment, as well as for refusing appropriations to new objects and purposes, however meritorious. It is as much the duty and interest of governments, as of individuals, when burthened with obligations, to study and practice economy. With resources to justify our munificence, we might properly respond to the various enterprises and the numerous appeals that will claim your consideration; but when the means required to promote general or individual interests can only be obtained by a resort to taxation, we shall best discharge our duties by refusing to increase the public burthens. Indeed I cannot forbear to express the opinion, that until the canals are completed, and the present floating indebtedness is paid, it is just and

expedient to confine appropriations to the simplest and most economical necessities of government.

There is a deficiency in the General Fund Debt Sinking Fund to pay the interest upon that part of the State debt chargeable upon it, of $448,674.47, which it also becomes necessary to provide for.[3]

The amount of capital of the School Fund is $2,551,-260.52, which shows an increase during the year of $24,-868.28.

The capital of the Literature Fund amounts to $269,952.12. The amount received for revenue is $16,411.01, which is annually to be distributed to academies, and used for the purchase of text books, maps and globes, and philosophical and chemical apparatus for academies.

The capital of the United States Deposit Fund, being the amount received from the United States, is $4,014,-520.71. The amount received for revenue is $248,767.52; which is also appropriated for the annual support of academies, common schools, the State Normal School, the instruction of teachers' classes in academies, and for teachers' institutes.

The annual report of the Comptroller will be laid before you at an early day. It will be found to contain information essential to a proper understanding of the financial condition of his own Department, and of the several boards with which he is associated. To that report I ask the special attention of the Legislature.

The report of the Auditor of the Canal Department will also be presented to you, and will be found to contain much useful information.

As evidence that our free banking system furnishes security to those who hold its circulating notes, it may be stated that the entire loss under it, to bill holders, result-

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[3] Chapter 383, passed April 16, provided for a tax of one and one-eighth mills for general State purposes, which was specifically appropriated by other acts.

ing from suspension during the severe financial embarrassments of 1857, was but $7,989.64; while the community suffered to the extent of nearly 50 per cent of the amount in circulation, upon the bills of three chartered banks, which failed during the same period of financial disaster. It is greatly to the credit of our banks, that they so readily, and so speedily, returned to the redemption in coin of all their obligations, and have since maintained specie payments, while at the same time they have rendered to the public all needful facilities.

There may be alterations suggested, and judicious changes made in some of the details of the present Banking system; but I take pleasure in saying, that as a whole, the system is working satisfactorily and securely — far more so than any former one that has existed in this State.

The Superintendent of the Banking Department will very soon lay before you his annual report, containing such recommendations as his experience and practical mind may have led him to observe as necessary to be adopted by the present Legislature. I refer you to it as being entitled to great consideration.[4]

Some amendment of the General Law for creating Insurance companies, is deemed necessary to prevent fraudulent practices in the mode of investing the capital stock thereof.[5]

The omission of several railroad companies, to comply with that portion of the act of 1850, known as the "General Railroad Law," which provides, that "every railroad com-

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[4] The banking law was amended in several particulars by chapter 236, passed April 11. Chapter 277, passed April 13, contained provisions relative to the reduction of the capital stock of banks. Chapter 365, passed April 15, related to the liability of bank stockholders.

[5] An insurance department was established by chapter 366, passed April 15. A superintendent of insurance was to be appointed by the Governor and Senate, to hold office three years, and was vested with general supervision of insurance companies and insurance affairs. The powers then exercised by the comptroller in these respects were transferred to the insurance department.

pany formed under this act, shall make an annual report to the State Engineer and Surveyor, of the operations of the year ending on the 30th of September, which report shall be verified by the oath of the Treasurer or President and Acting Superintendent of operations, and be filed in the office of the State Engineer and Surveyor by the 1st of December in each year,'' has rendered it out of the power of the Engineer Department, to furnish accurate statistics in relation to the operations of that large and important public interest and property in our State, during the year 1858. I find it necessary, in referring to the subject, to rely upon the returns of 1857. From the valuable report of the State Engineer and Surveyor presented to the Legislature on the 5th of March, 1858, it appears there were eighty-eight railroad corporations in the State, having a total amount of capital stock of $74,289,488.98, of which was paid in $68,198,758.25, and having a funded debt of $63,942,125.40, and a floating debt, at that time, of $4,548,-806.69, making a total amount expended for construction of $136,689,690.34. Of these eighty-eight railroad corporations, costing, apparently, the sum of $136,689,690.34, as above, only fourteen declared dividends to stockholders in 1857, which were represented by capital stock $43,712,400; bonded and other debt $24,949,481.72.

An exposition by the State Engineer and Surveyor of some of the causes which have produced a result so disastrous to this description of property, will be found in the same report, to which I call the attention of the Legislature.

Those who have made investments in railroad stocks, or bonds, have a right to inquire whether it is not within the power of the Legislature to provide some remedy for this apparent annihilation of their property in the one case, and the vast depreciation of it in the other, since the directors and managers seem unable to do so. I call attention to this subject, in the full belief that you will give to it that careful consideration and action which a property so

large in amount, chiefly held by your own citizens, requires at your hands.

The number of convicts in the several State prisons on the 30th September, 1858, was as follows:—Auburn, 747; Sing Sing, 1,110; Clinton, 358. Total, 2,215. Of which were insane, Auburn, 13; Sing Sing, 21; Clinton, 3.

The expenses thereof for the year ending 30th September, 1858, were:—Auburn, $77,674.13; earnings, $59,840.67. Sing Sing, $119,900.14; earnings, $75,916.48. Clinton, $55,781.76; earnings, $21,420.88.

The constitution provides for the election of three inspectors, as follows: "There shall be elected annually one Inspector of State Prisons, who shall hold his office for three years; said Inspectors shall have the charge and superintendence of the State Prisons, and shall appoint all the officers therein."[c] Since its adoption in 1846, the expenditures of the three prisons have exceeded the earnings, viz:

1847	$68,532.32
1848	138,400.39
1849	84,394.71
1850	82,396.97
1851	70,390.05
1852	81,364.94
1853	101,637.20
1854	130,115.59
1855	326,172.63
1856	102,531.16
1857	119,321.26
1858	234,290.01
Total	$1,539,547.23

which has been paid from the General Fund.

[c] Const. 1846, art. 5, § 4.

It is well known that our prison system is much more expensive than the system in operation in several other States; while in its discipline and management it is inferior to some others. Some improvement in both respects can be made by a thorough revision of all the Statutes relating to the prisons, which I earnestly commend to your attention during your present session.

It may become necessary to enlarge some of the present structures, and further appropriations for insane convicts, are believed to be necessary.[6]

The asylum erected at Auburn for insane convicts, is nearly ready for use, and is creditable to christian civilization and humanity.

But before our prison system will be a "model for the imitation of others," as it ought to be, it will require such a change in the organic law as will confer upon one person the power and authority now given to the present inspectors, thus putting one general in command instead of three. He should be appointed by the Governor and Senate, and be removable for cause, at the discretion of the former.[7]

Our criminal law, except in a few isolated cases, where considerable communities have sympathized with the perpetration of offences springing out of alleged popular evils, local in their character, has been adequate to the arrest and punishment of offenders, with the promptitude and certainty which the Constitution and laws enjoin. In the cases referred to, which led to the commission of a great public offence, and a wanton destruction of the property of the State,[d] the local magistracy, and the Grand

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[6] Chapter 453, passed April 18, appropriated $12,000 for one hundred and thirty new cells at the Clinton prison, $18,000 for enlarging and newly roofing the Auburn prison, and $20,000 for enlarging the Sing Sing male and female prisons.

[7] The Governor's proposed reform in prison administration was embodied in the Constitution in 1876, article 5, section 4, by an amendment which created the office of superintendent of prisons.

[d] Quarantine buildings on Staten Island.

Inquest of the people failed to arrest and present the offenders for trial and punishment.

If, when reflection and reason shall have taken the place of excitement and passion, these functionaries do not render that obedience to the law without which no citizen is safe in his person and property, nor any community respectable, it will remain for you to enact, within the limits of the Constitution, some adequate remedy for this unlooked for evil.

Immediately after the burning of all the Quarantine buildings at the Marine Hospital, which took place on the 1st and 2nd of September, my predecessor, on the 7th of September, acting from a high sense of public duty, issued his proclamation, declaring the Island in a state of insurrection, and ordering the property and sick to be protected by the military arm of the State. For a statement of these unfortunate occurrences, I refer the Legislature to a communication made to me by Governor King, which will be laid before you, together with other documents connected therewith.

The question of another and more suitable site for a Quarantine establishment for the port of New York, than that which, since 1798, has been occupied for such purposes, has engaged the attention of the people and the government; but no effective measures for a change of location have thus far been adopted.

Efforts were made through Commissioners appointed for that purpose, to obtain the consent of the State of New Jersey for the occupation of a portion of Sandy Hook, designed, apparently, by nature for this sanitary purpose. These efforts, strenuously opposed by some of our own citizens, and resisted, upon what I must regard as unfounded apprehensions, by the Legislature of New Jersey, proved abortive. I am, however, unwilling to relinquish the hope that, with a better understanding of the duties and interests of both States, a location in all respects so advantage-

ous and appropriate, may yet, with the consent of New Jersey, be obtained.

I transmit to the Legislature a report of the Commissioners for the removal of the Quarantine station; and a report to them from Capt. H. W. Benham, of the United States Engineer Corps, together with a report of the action had thereon by the Governor, Lieutenant-Governor and Comptroller, under date of 28th December, ult., referring to the Legislature a plan for creating five acres of land upon Old Orchard Shoals, between the Narrows and Sandy Hook, for a Quarantine establishment.

But whether Sandy Hook, or Old Orchard Shoals, or some other eligible point within the Bay of New York be finally designated, I deem it of paramount and enduring importance to the health and welfare of Staten Island, of New York and Brooklyn, and of that portion of New Jersey contiguous to Staten Island, that a permanent location for the entire quarantine establishment should be obtained, and its removal from Staten Island carried into effect at the earliest possible day, and to the accomplishment of that object my efforts will be directed. With these views, I recommend the Legislature to provide for the appointment of a new commission, to consist of three persons of eminent character and qualifications, familiar with the subject and with the requirements of the State, to whom the whole question shall be committed, to report a plan to the Legislature, that, if approved, may be adopted early in the session.

In establishing for all time quarantine grounds for the commerce of our own country, and that also of the maritime world, I deem it right and proper to ask the concurrence and co-operation of the Federal Government. With common duties and interests, in the preservation of the public health, and in the execution of the revenue laws, it is manifestly proper that, in determining a site for quarantine and revenue purposes, the State of New York should

consult the General Government. Nor is it to be doubted that that government will participate with this State in the responsibility and expense of providing ample hospital and revenue facilities for the commerce of the world.[8]

As immediately connected with this subject, I call your attention to the numerous health laws, and to the manner in which they are administered at the port of New York, fully believing that there is an excess of machinery and of officials around quarantine, greatly inconvenient and oppressive to commerce, which should no longer be required to bear the manifold taxes that for the last few years have been imposed upon it. According to existing arrangements, when a ship enters Sandy Hook, "she is boarded and taxed by a licensed pilot; next stopped and taxed by a licensed physician; next hailed by a licensed steam-tug; then boarded by a licensed warden; next by a licensed fumigator, then taken possession of by licensed stevedores, her cargo handed over to licensed lightermen, again subject to an inroad of fumigators, and then towed to New York by a licensed quarantine tug, and guarded on her way by licensed policemen; then she falls into the hands of a licensed harbor master, till finally the owner is glad to shake off this swarm of officials" at any cost; and all this in the name of the State, and for the preservation of the public health. It would be difficult to adopt a system more inconvenient and more expensive.

The expenditures for the public schools of the State for the year 1857, are:

For teachers' wages	$2,372,113.86
For libraries and school apparatus	136,597.80
For colored schools	10,729.93
For school houses, sites and repairs	765,526.59

[8] See special messages of January 12 and 13, for communications relating to quarantine affairs. Chapter 508, passed April 19, appropriated $50,000 for a temporary quarantine establishment on Staten Island.

For incidental expenses	$369,027.05
Amount remaining unexpended	138,953.56
Total	$3,792,948.79

The above amount expended for school purposes was raised as follows:

Balance unexpended from the previous year	$140,142.40
From Common School Fund and State tax.	1,346,902.56
From Gospel and School lands	17,449.02
From school district tax	1,846,542.71
From school district rate bills	390,515.50
From all other sources	51,396.60
Total	$3,792,948.79

Number of school districts in the State...	11,617
Number of school houses	11,566
Number of children between 4 and 21	1,240,176
Number of children attending the public schools	842,137
Number of teachers employed within the year	31,747

By the law of 1851, which caused the raising of $800,000 annually by general tax, the principle was established that "the property of the State should educate the children of the State." The law of 1856 extended and enlarged the appropriation by a three-fourth mill tax, which has increased the appropriation from that made by the law of 1851, to nearly $1,200,000.

Under the management of the present Superintendent of

Public Instruction,* the school system of our State is acquiring, steadily but surely, a standing and reputation that will make it a model for others.

For especial information in relation thereto, I refer you to the report of that officer, which, under the law of 1858, changing the close of the "school year" from 31st December to 30th September, will enable him to present the statistics pertaining to this important interest down to a period corresponding with the other departments of the State, and not attainable under previous statutes.

I am informed by the Superintendent of the Salt Springs, that the amount of salt inspected at the State salines, during the past season, has been seven million bushels. This amount exceeds the inspection of 1857 by nearly three million of bushels, and is about one million in excess of any previous year, and is a gratifying proof of the local and general benefits flowing from the possession of these remarkable waters. The business has been more remunerative to the manufacturers than for a year or two preceding, and promises favorable results for the future.

The State salines in Onondaga county are among the most important of any in the country east of the Rocky Mountains, whether judged by their productiveness, their location with reference to the main channels of internal commerce, the purity of the article manufactured, or the extent to which it is destined to be carried.[9]

We have no deposits of coal within our limits. It should, therefore, be our object to open channels and avenues of inter-communication with our neighboring State of Pennsylvania, for the easy and rapid transit through our canals

* Henry H. Van Dyck.

9 Chapter 346, passed April 15, was a general act relating to the manufacture of salt. It imposed a duty of one cent per bushel on salt, prohibited the sale of the salt springs, designated certain officers of the department, and prescribed their duties, and contained numerous and detailed administrative provisions. The act revised and repealed various statutes relative to salt springs and the manufacture of salt.

and over our railroads, of that necessary article of domestic fuel, the use of which, also enters so largely into all our industrial occupations.[10]

As far as the great agricultural interest is concerned, I am not aware that it seeks or needs anything from the State. Our agricultural population is happy, contented and intelligent. Should, however, that important interest require any legislation or aid, its wishes should be listened to with the greatest attention.

The total number of emigrants that arrived at the port of New York during the year, from January 1st to December 31st, was 78,589, being only about forty per cent. of the arrivals for 1857, and twenty-five per cent. of the arrivals of 1854, and less than during any year since 1847. This has caused a large diminution in the fund under the control of the Commissioners, which is created by a *per capita* commutation of two dollars for each alien passenger; while, under the law giving the emigrant a claim on the fund for five years after arrival, the commission is liable for the support of over 860,000 persons arrived since January 1st, 1854, or for such portion thereof as may, from inability to support themselves, become chargeable in any part of the State.

Owing to the unfortunate occurrences elsewhere referred to, by which all the hospital buildings on Staten Island were set on fire and destroyed, the Commissioners found it necessary, in re-erecting buildings for the sick and destitute emigrants, to use funds that were intended to be applied for their support in the various counties.

In addition to about $50,000 still due the counties for the support of emigrant poor, the Commissioners owe, on mortgage upon all the real estate held by them $150,000,

[10] The extension of the Chenango canal to the Pennsylvania State line as proposed by chapter 88, passed April 1, was intended to provide additional facilities for bringing coal into the State, and this was one of the subjects to be included in the report of the State Engineer and Surveyor in connection with the proposed extension.

contracted for the support of the Marine Hospital, and the Refuge and Hospital on Ward's Island, and for the purchase of lands, and the erection of buildings. The Ward's Island establishment, under the charge of its capable Superintendent, as an eleemosynary institution, is not excelled anywhere, whether in discipline, morals or economy. The annual report of the Commissioners will soon be laid before you, to which I refer for all necessary information, in detail, financially and otherwise.

The Society for the Reformation of Juvenile Delinquents in the city of New York, had under its care, at the commencement of the year, boys 577; girls 70; together 647. Since which there has been received 350. Total 997; 470 of whom have been disposed of, either by indenture or placed with respectable families in the country. Four hundred and fifty boys and seventy-seven girls are now employed in the workshops, in schools, and in the labors of the house, according to their several capacities, so regulated by industrial occupation and mental training as to fit them for resuming in society paths leading to a virtuous and honorable life. Not a single death has occurred among the inmates during the year. Salubrity of location, thorough ventilation of the house, and the sanitary system pursued by the managers and officers of this society, have mainly contributed to produce this happy result.

The Western House of Refuge at Rochester, had under its care, on the 1st of January last, 345 boys. Since that time 143 boys have been received, and there have been discharged and put to service 113, leaving at present 375. Two deaths have occurred during the year. Under the existing management, this institution is fulfilling all the noble purposes for which it was designed. The State cannot err by an enlightened spirit of appropriations to this class of institutions, it being far wiser to reform and instruct the young than to be compelled to build prisons for them as they advance in crime, later in life.

The State Lunatic Asylum at Utica, commenced the year with four hundred and fifty-one patients, to which were added during the year three hundred and thirty-three. Whole number treated, seven hundred and eighty-four. Discharged recovered, one hundred and fourteen; discharged improved, thirty-three; discharged unimproved, ninety-nine; discharged not insane, five; died, thirty-one; remaining November 30, 1858, five hundred and two. Since its opening, January, 1843, the Asylum has treated five thousand three hundred and ninety-eight patients, of whom two thousand two hundred and twenty-six have recovered. On the 14th of July, 1857, the central portion of the pile of buildings was burned down, as was also the Asylum barn, a few days afterwards. The incendiary, who was a patient, was tried and sent to the State Prison at Auburn. The Legislature of 1858, appropriated $68,742 for the reconstruction of the burned buildings. No further appropriation will be required for this purpose. The institution is free from debt. It has for several years been inadequate to the wants of such of the insane as the laws commit to its care, and, I believe, it will be the enlightened purpose of the State to provide for the construction of another Insane Asylum at the earliest period the condition of the Treasury will warrant an expenditure for the purpose.

The trustees appointed by the Legislature to locate the Inebriate Asylum, have accepted from the liberal citizens of Binghamton, two hundred and fifty-two acres of land as a donation for its site.

The Asylum was commenced on the 23d day of June. Its corner stone was laid on the 24th day of September. Upwards of 300,000 bricks and 50,000 cubic feet of stone have been laid in the walls of the building. There have been $50,000 subscribed to the fund of the Asylum, 25 per cent. of which has already been paid. The donations in land, by the citizens of Binghamton, are valued at $25,000. The building is expected to cost about $100,000. Although

the first and only institution of the kind in this country, and, as far as I know in any other, the importance of the Inebriate Asylum is felt and acknowledged by every intelligent citizen of our State.[11]

The New York Institution for the Instruction of the Deaf and Dumb, during the past year, has educated and supported 159 boys and 141 girls, 22 of whom have received the benefit of instruction in the higher branches. Of these 232 were the beneficiaries of the State, in conformity with existing laws.

The annual appropriations furnish the means of support and education for the number of pupils authorized by law to be selected by the Superintendent of Public Instruction. When it was thought advisable to make a change of location, the property on the Fourth Avenue was sold, and an estate was purchased about nine miles from the City Hall. This property, comprising thirty-seven acres of land, lying on the margin of the Hudson River, has been transferred to the State, and is now held in fee, subject to certain incumbrances and restrictions. The buildings commenced in 1853 are still incomplete, and subject to some indebtedness. In buildings and improvements there have been expended four hundred thousand dollars, about one fourth of which has been paid by the State. No situation could be found better adapted to the objects of the institution.

The New York Institution for the Blind deservedly retains the confidence of the public. Within a period of seven years, the number of children entrusted to its charge from this and from adjoining states has nearly doubled. The institution now contains about two hundred inmates. The teachers are selected from the pupils and graduates,

[11] Chapter 381, passed April 15, appropriated for the State Inebriate Asylum ten per cent of the excise moneys received annually in each county. The act approved the selection of the site at Binghamton, and named a board of trustees of the Asylum who were subject to removal by the Senate on the Governor's recommendation.

and blind persons are, as far as practicable, employed in the household. After a term of seven years, they return to their homes throughout the State, and experience shows that blind persons can be placed above the need of public charity.[12]

The Asylum for Idiots, located at Syracuse, under the superintendence of Doctor H. B. Wilbur, is fully vindicating the wisdom of its founders.[13]

The militia, embodying three hundred and sixty-seven thousand six hundred and thirteen officers and men, the organized portion of which, comprising seventeen thousand six hundred and thirteen officers and men, uniformed and equipped, is divided into eight divisions, twenty-six brigades and sixty-two regiments, is in an efficient condition. Pursuant to the law of 1858, there have been erected, or are in process of erection, arsenals in the following places, namely: at Albany, Buffalo, Brooklyn, Corning and New York. Those at Buffalo and Corning, have been completed; the one at Brooklyn has not yet been accepted; that at Albany has been erected, but not finished; the one in New York is in process of erection, and has been delayed by the falling of the roof, in November last, thereby causing a large loss in damages, but whether to the State or to individuals, will depend upon investigation into the causes, yet to take place. For the first time in many years, the militia has been engaged in actual service. In conformity to the proclamation of my predecessor, issued on the 7th of September last, two hundred and fifty officers and men, including one section of artillery, were detailed from the troops of the first division, under Major General Sanford, to the Quarantine grounds at Staten Island, near the buildings to be erected for the accommodation of the sick emi-

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[12] Chapter 278, passed April 13, authorized the New York Institution for the Blind to sell a part of its real estate, and directed the disposition of the proceeds.

[13] By chapter 129, passed April 5, the superintendent of public instruction was made *ex officio* a trustee of the State Asylum for Idiots.

grants, to defend the property of the State and the lives of the patients, against all violence. Subsequently, viz: on the 19th of October, this force was reduced to one hundred and twenty-five officers and men, who were relieved on the 3d instant. The expenses for maintenance and support have been assumed and paid by Governor King. It will be the province of the Legislature to provide for the reimbursement of this money, either by tax upon the county of Richmond, or from the State treasury. It will also be proper, in the same manner, to provide for the payment of the troops, whose soldierly conduct and bearing have deservedly been the subject of much commendation.[14]

During the past year the Metropolitan Police force has been fully organized, by the appointment of all its officers, and the full complement of policemen; and its efficiency has been such as promises soon to render it, with the addition of such improvements in its government as experience may suggest, a most effective means for the maintenance of order and the protection of life and property, in the great center of population in which it is located. In this result, the people of the State cannot but be deeply interested, for the rapid growth of the cities of New York and Brooklyn, which form the chief population of the district, draws thither, more and more, every year, the residents of other sections of the State, for various purposes connected with pleasure or business.

It must, therefore, continue to be an object of solicitude, as well with those residing without, as those residing within the limits of the district, that its police government shall be effectual, not only to preserve the public peace,

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[14] Chapter 23, passed March 1, appropriated $25,000 to reimburse former Governor King for expenses incurred by him in connection with the destruction of the quarantine property on Staten Island in the summer of 1858.

Chapter 205, passed April 9, provided for the completion of several arsenals and armories except in New York, and chapter 273, passed April 13, provided for the completion of the New York arsenal, and the settlement of the controversy as to the cause of the fall thereof.

but at all times to promptly afford the necessary protection to the Metropolis in which its principal functions are exercised; and the Legislature having assumed to itself, in the passage of the act organizing the Police District, the power conferred by the Constitution for the general public good, it should not cease to watch with jealous care, the results of the organization, and to adopt such further measures as in its wisdom may be deemed necessary for the better and more efficient government of the force.

The Board of Police Commissioners, in their annual report, which will hereafter be presented to you, make several suggestions for this purpose, which I commend to your careful consideration. Among these is the recommendation that the force be increased in the city of New York, in order that that metropolis may be better protected than can now be done with the number of policemen at the disposal of the Commissioners.

It would seem, from statistics which they present, that most if not all of the principal cities of Great Britain, have each a police force exceeding in proportion to their population, that now possessed by New York. This power to increase has, however, in the act creating the Metropolitan Police, been given to the boards of supervisors of the several counties composing the district, and unless some imperative necessity should determine otherwise, I would respectfully recommend that the power be left where the act has, in my opinion, judiciously placed it. If, however, the supervisors of any of the counties comprising the district should, after due notice, neglect to sanction the appointment of an adequate police force, the interference of the Legislature may become proper.

Our laws forbid aliens from acquiring and holding real estate, unless they make depositions that they are residents, and intend always to reside in the United States, and to become citizens thereof, and that they have taken such incipient measures as the laws of the United States

require, to obtain naturalization. In consequence of this prohibition, special applications are made to the Legislature. Instead of granting such special applications, which has usually been done, I advise the passage of a general law, or such an amendment of the existing law on the subject, as will permit all aliens, who are actual residents of this State, to acquire, hold and convey real estate at their pleasure. I do not think any danger need be apprehended from such an enactment. It would be a proper measure, and preclude the necessity of applications for special privileges.[15]

Now that direct taxation is necessary, in order to supply the treasury with funds for the payment of interest on a considerable portion of the public debt, as also to pay the expenses of the government, I deem it a suitable occasion to remind the Legislature, that much inequality exists in the valuations of both real and personal estate, and that measures should be adopted for the correction and equalization of such valuations.[16]

There is an unadjusted question, in relation to the boundary line between this State and the State of Connecticut, the necessary information concerning which, I have not been able to obtain; but it is a question which ought to be settled during the present session, and I call attention to it, fully believing it will receive that consideration and action which justice to our own, and to our sister State, demands.[17]

It has been, for several years, the custom for certain counties to make application to the Legislature to extend the time for the collection of taxes, which applications have

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15 The Legislature enacted three special laws relating to aliens, but did not enact a general law as recommended by the Governor.

16 By chapter 312, passed April 14, provision was made for the equalization of taxes among the several counties by the board of equalization, to be composed of the commissioners of the land office and of three state assessors to be appointed by the Governor and Senate.

17 See special message of February 2, for a discussion as to the Connecticut boundary line.

usually been granted. Being only partial, the operation is necessarily unequal, and ought to be discouraged and discontinued.[18]

I call your attention to the large sums expended annually for the printing of voluminous and non-essential documents, believing that with a careful discrimination as to the matter printed, considerable sums can be saved, while all really useful and necessary information can be as largely disseminated as at present.

It ought to be the earnest object and desire of every good citizen to exercise whatever influence he possesses, in sustaining any proper law for protecting the purity of the elective franchise, by carrying into effect that part of the Constitution which provides "that laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage."[a] The example of some of the older States, in which laws for the registration of voters have existed for very many years, and in which they are successfully and easily carried out, with the acquiescence and approval of every one, has led several of the other States, within a few years, to enact similar laws, having for their object the registration of all persons who are legally entitled to vote.

These laws are general in their character, and are so framed that in no case can those entitled to vote be deprived of their just rights on account of temporary absence or otherwise. Such a law, properly framed, is essential in securing to all citizens, native as well as adopted, the proper exercise of the elective franchise. To do this, is one of the highest duties of a State; and complying, as it will, with a mandate of the Constitution, I recommend its enactment during the present session.[19]

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18 See special message of February 28, for veto of a special act extending the time for the collection of taxes. Chapter 30, passed March 5, was a general act on the same subject.

[a] Const. 1846, art. 2, § 4.

19 A general registration law, chapter 380, was passed on the 15th of April.

In the delegation of the pardoning power by the Organic Law,[f] it was presumed that courts and juries, in criminal cases, would perform their duties cautiously, wisely and justly, on the humane principle, that if there be any reasonable doubt the accused must be acquitted, and that no conviction will occur without due proof of guilt. It is greatly to the credit of our judicial tribunals, that innocent persons are rarely convicted. The framers of the Constitution could not have intended that the Executive would, as a general rule, be called upon to judge of the guilt of the condemned, or of the severity or fitness of the sentence. These are questions for the Judiciary, except in extreme cases; and in the exercise of the pardoning power, it is the duty of the Executive to act upon these principles.

Nothing will so certainly deter from the commission of crime, as the certainty of punishment. The great purposes for which punishments are instituted demand it, certainly so far as their design is to operate as a warning to others, and a reformation of the offender. Neither is attained unless punishment surely follows the offence, and is of sufficient severity to warn others against the dangerous example, and if possible to improve and amend the criminal. These views lead to the conclusion that the pardoning power must be cautiously exercised; that *ex-parte* applications for Executive clemency now so frequently made will be viewed with disfavor, and that when a conviction for crime has legally been had, and is not shown to have been improper, the offender must expect punishment as his just reward. I have reason to believe that for some classes of offences under our criminal code, the terms of imprisonment ought to be shortened; and that greater discretion should be given to the courts for that purpose. I commend the subject to the attention of the Legislature as one entitled to careful consideration.

The existing law for the sale of intoxicating drinks, and

[f] Const. 1846, art. 4, § 5.

the prevention of intemperance, pauperism and crime, has received, within the last few months, a constitutional affirmation by the highest court in the State.* Such being the case, it is but just to test the principle of the law before radical changes are adopted. Defects are, however, believed to exist in some of the details of the law. If so, proper amendments should be made at the present session.

Representing, as you do, all parts of the State, and coming directly from your constituents to the discharge of your duties here, you will be qualified to judge of the nature and extent of such defects. But since the constitutionality of the law has been established by the Court of Appeals, its practical operation should be fairly tested, for which reasonable time should be given. Any further just and constitutional enactment, for the suppression of the evils of intemperance, will have my sympathy and cooperation.

The practice of postponing the consideration of the annual appropriation bill till just at the close of the session, is a grave error and should be discontinued. Moments of excitement on the eve of an adjournment, when members are worn and weary in the din and bustle which attends the last few hours of a protracted session; when many have left for their respective homes, and when those remaining are preparing to do so, are not the hours best adapted to calm, deliberate judgment and action, upon a bill containing grants of money to more than one hundred various objects, amounting to more than one million of dollars; all to be collected from the people by direct taxation. However long the custom has prevailed, no necessity exists for its continuance. The bill can be considered, debated and enacted much more understandingly, wisely, and for the comfort and convenience of members, during the first

* The Governor probably referred to Behan v. People, 17 N. Y. 516, decided in June, 1858. The general policy of the act was sustained, but without directly considering any constitutional question.

month of the session, than during its last hours. It is also highly necessary as exhibiting the aggregate sum to be embraced in the bill for taxation, and as affording the Executive that time for examination and deliberation intended to be allowed him. I commend the subject to your earnest consideration, in the belief that the course recommended will lighten your labors, and terminate your duties here at an earlier period than could otherwise be done.

Under the act to establish regulations for the port of New York, passed April 16, 1857, the Legislature devolved upon the Board of Commissioners of Pilots, specific duties in relation to the harbor of New York, its docks and its piers, which had become so much obstructed with various nuisances as to cause apprehension in that city of serious injury to its commerce. The commissioners performed their duty promptly and efficiently, while the improved condition of the territory over which they have authority, is so decided as to leave no doubt of either the necessity or the wisdom of the enactment.

Not quite so much can be said of the act passed at the same session, to reorganize the warden's office of the port of New York; some provisions of which are deemed oppressive to the shipping interest, and require amendment. But I think it would be improper to destroy that portion of it which affords protection to the owners of cargo.

Professor A. D. Bache, Superintendent United States Coast Survey, made to my predecessor, near the close of the year, a report of his observations in continuation of the physical survey of the bay and harbor of New York, which will be laid before you.

The duties of legislators, always arduous and perplexing, have been rendered more distasteful and irksome of late years, by the growth and prevalence of the practice of employing agents to surround them in their halls and to waylay them in their walks, with representations and importunities in behalf of bills, in which a personal or corporate

interest is involved. These agents gain access to the legislative halls, and follow members even to their seats. So general and so annoying is this practice, that lobbying has become a trade, often gainful but never creditable. Its existence and its excesses tend to create a general repugnance to all bills involving a private interest.

A claim or other bill, affecting a private interest, may properly be explained and commended by the person or party interested, or by some one authorized to speak in its behalf, who should confine his efforts, mainly, to the committee or committees having in charge the measure in question. Beyond this, lobbying is objectionable; and when it follows members to their private apartments, and intrudes upon hours reserved for studying documents and preparing reports, is insufferable. It is my deliberate purpose to discourage these practices, and to disapprove all bills which I shall have good reasons to believe have been passed by such means.

The State of New York has consistently maintained a conservative attitude with regard to those of her sister States which cherish systems of labor differing from her own. Disclaiming all right or wish to interfere with the domestic concerns of any community outside of her own limits, she insists on her right to maintain wherever the issue shall be legitimately presented, the superiority of liberty over slavery whether as a condition of personal enjoyment, of intellectual and moral development, or of social and general well being.

While herself slave-holding, she voted to prohibit by act of Congress the extension of slavery into federal territory, as thirty years later, she voted to exclude it from Missouri and from the Federal Territory stretching northward and westward from that State.

Nearly twenty years later, the question recurred with reference to territories then about to be acquired from Mexico, and again her voice was raised, distinctly and

emphatically, on the side of civilization and humanity. Throughout the struggle which preceded and attended the organization and settlement of Kansas, her devotion to the cause of free labor was never doubtful, nor lukewarm. No sophistry has sufficed to blind her to the fact, that the establishment of slavery upon territory hitherto free, would be a calamity and a wrong, for which, not only the handful of settlers who had already drifted upon the soil of such territory, but the whole American people who had permitted such establishment, would be justly held responsible.

To contravene the settled policy of our revolutionary statesmen, and remit the question of slavery or no slavery in a territory, to the unchecked volition of a majority of the first hundred or thousand persons who might happen to halt upon its soil, is to concede the fundamental assumption of those who entertain different opinions upon the subject, that no national, no moral considerations, are involved in the issue between free and slave labor, but that the preference of one, as the other, is to be determined by climate, adaptation to tropical or non-tropical products, or by some other purely physical condition. It is to refer a grave question, vitally affecting the reputation and welfare of twenty-five millions of people, joint owners of a vast national domain, any of whom may be, and some of whom, with the descendants of nearly all, in the nature of things must be, among the future inhabitants of that domain, to the decision of less than a thousandth part of their number.

This is not genuine popular sovereignty, but the sovereignty of chance, of accident, of fleetness in reaching and dexterity in appropriating the territory in question — the sovereignty of a few persons over the destinies and happiness of millions. New York has never assented and cannot now assent to a theory which thus divests her of all control over the common heritage of her sons with those of her sister States, which declares her an alien, and an intruder on the patrimony acquired by the common blood and

treasure of the whole American People; and which virtually proclaims to the world that she cares not whether her children who migrate westward, shall thenceforth live where manual labor is respected and honored, or where it is regarded as the fit employment only of the enslaved and degraded. Such indifference is not felt, and ought not to be feigned.

Every American must in his heart, desire either that slavery should, or that it should not, be extended into our federal territories, and each has a right to proclaim and act upon its choice. If the deliberate sentiment of the people, constitutionally expressed, shall favor slavery extension, New York will submit, as she has always submitted, to decisions fairly made, which contravene her convictions or her interests, however disappointed, by any lawful action of the constituted authorities of the United States. She has never faltered nor sought redress in acts of nullification nor in threats of disunion. She wages no war upon the institutions nor the interests of her sister States, frankly avowing however that should the legal exclusion of slavery from the federal territories conduce to the diminution of its influence, and the limitation of its existence throughout our country and the world, that fact, so far from constituting an objection, would afford an additional reason for her emphatic adherence to the policy of restriction.[20]

EDWIN D. MORGAN.

Albany, January 4, 1859.

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[20] The Legislature in April adopted the following concurrent resolution declaring that

"This legislature and the citizens of this state, look with surprise, mortification and detestation upon the virtual reopening, within the federal union of the slave trade; that against this invasion of our laws, our feelings, and the dictates of christianity, we solemnly protest here, as we will protest elsewhere, and especially at the ballot box; that we call upon the citizens of this Union, to make common cause, in the name of religion, humanity, and as friends of principles underlying our system of government, to unite in

SPECIAL MESSAGES.

January 12. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 11, 1859.

"I transmit, herewith, the following documents relating to the Quarantine at the port of New York, viz:

1. Communication from Gov. King to myself, dated December 11, 1858.

2. Letters from Commissioners for removal of Quarantine to Gov. King, dated May 7, 1858.

3. Report of Commissioners for removal of Quarantine, dated May 27, 1858.

4. Copy letter, from same, to Prof. A. D. Bache, dated May 29, 1858.

5. Copy reply, from Prof. Bache, dated May 31, 1858.

6. Report of Commissioners for removal of Quarantine, with copy of resolution passed by them, dated June 30, 1858.

7. Copy letter of Henry J. Seaman, Private Secretary, in reply to same, dated July 15, 1858.

8. Letter of Commissioners of Emigration to Gov. King, dated September 3, 1858.

9. Copy reply of Gov. King to same, dated September 7, 1858.

10. Copy of proclamation issued by Gov. King, September 7, 1858.

11. Copy letter of Gov. King to Attorney General, dated September 8, 1858.

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bringing to immediate arrest and punishment, all persons engaged in the unlawful and wicked slave trade, and hereby instruct our senators and representatives in congress to exert all lawful powers for the immediate suppression of the infamous traffic."

A constitutional amendment was adopted for submission to the next Legislature abrogating the property qualifications imposed by the Constitution on colored voters. The amendment was again adopted by the Legislature of 1860, and submitted to the people, but was rejected by a large vote.

12. Reply of Attorney General to same, dated September 9, 1858.

13. Report of Commissioners for removal of Quarantine, dated September 14, 1858, with accompanying papers.

14. Copy letter of Gov. King to the Comptroller, dated September 25, 1858.

15. Reply of Comptroller to same, dated September 27, 1858.

16. Copy letter of instruction, of Gov. King, Lieut. Gov. Selden and Comptroller Church, to Capt. J. W. Benham, dated November 3, 1858.

17. Letter of Gov. King, dated December 29, 1858.

18. Report of Capt. H. W. Benham, dated December 21, 1858.

19. Report of Commissioners for removal of Quarantine, dated December 21, 1858.

20. Approval of report of Capt. H. W. Benham, by Gov. King, Lieut. Gov. Selden and Comptroller Church, dated December 28, 1858, referring the plan to the Legislature. [See notes 8 and 14.]

E. D. MORGAN."

The following letter from Governor King to Governor Morgan contains a history of the destruction of the quarantine property.

"STATE OF NEW YORK:

EXECUTIVE DEPARTMENT,
December 11, 1858.

SIR.—I herewith transmit for your information the papers connected with the disturbances at the Quarantine, on Staten Island, which have assumed the importance of a State question, and will, therefore, naturally fall within the topics to be considered in your message.

The case may be thus stated: The Legislature, by an act passed 6th March, 1857, directed the appointment of three

Commissioners, who ' shall procure, by purchase or otherwise, a suitable site for a Quarantine station, and shall then, without unnecessary delay, erect the wharves, buildings, hospitals,' &c. The Commissioners were forthwith appointed by the Governor and Senate, and they proceeded at once to their work, and soon arrived at the conclusion, after full examination, that the most unobjectionable, and altogether fittest place for Quarantine, would be Sandy Hook. This barren sand spit of land was originally conveyed to the United States by the State of New Jersey for public uses, and the President of the United States had consented to cede to the State of New York, and had actually ceded, so much thereof as might be needed for a Quarantine. But as the jurisdiction of the State of New Jersey might attach to any portion of this soil, not in the occupancy of the United States, it was deemed proper to apply to the Governor and Legislature of New Jersey for permission to erect on Sandy Hook the buildings needed for a Quarantine. The application was hopelessly unsuccessful, and the Commissioners, under the urgency of the approaching summer, when vessels from infected parts might be daily arriving, and of the peremptory direction of the law, that they ' shall, without unnecessary delay,' procure another site than that actually occupied for the Quarantine, immediately turned their attention to other localities, and finally selected Seguine's Point, on the south shore of Staten Island, as offering the most advantages by its comparative isolation, yet perfect accessibility, for a temporary Quarantine. They accordingly, having previously obtained, as by law required, the sanction of the Governor, Lieutenant Governor and Comptroller, purchased a sufficient quantity of land, with substantial houses and buildings thereon, making it distinctly known that this was a temporary expedient, which the exigencies of the case compelled them to adopt, and that their efforts to obtain a site, at which permanently to establish the Quarantine, would be continued.

Notwithstanding these explanations, and with a full knowledge of the absolute necessity under which the Commissioners acted, the valuable buildings at Seguine's Point were burnt, by a body of Staten Islanders, on the night of the 6th May, 1857, and the new and costly pier built at that place by the Commissioners, for a convenience and security in landing the sick from infected vessels, was in like manner subsequently entirely destroyed.

The proclamation issued by me offering a reward of $2,500 for the arrest and conviction of the incendiaries, and exhorting the sheriff and other officers of the county to a vigilant discharge of their duty, failed of effect, and to this day the authorities of the county of Richmond have taken no effective steps to vindicate the outraged law. The Commissioners for the removal of the Quarantine, repelled by New Jersey, and driven out from Seguine's Point by the Staten Islanders, had now no alternative but to continue the use of the old station, while still persevering in their endeavors to find another and more appropriate site. In this state of affairs they renewed, but without better success than before, their application to the State of New Jersey for permission to use Sandy Hook. These facts, duly reported by the Commissioners, were laid by me before the Legislature on the 10th of March last, to the end that they might dispose of the subject as they saw fit. There was, however, no action on their part, and of necessity the old Quarantine buildings and grounds were occupied as heretofore. Hence great excitement on Staten Island, so that at last, on the two successive nights of the 1st and 2d September last, an armed mob broke forcibly and furiously into the enclosure of the Quarantine grounds, fired the hospitals, houses and out houses, in some of which were patients in various stages of mortal disease, and dragging these sufferers from their beds, and placing them unsheltered on the ground, exposed to the midnight air and to the scorching heat of the burning edifices in close proximity,

utterly demolished the whole establishment, and then departed, unrestrained and unquestioned by any of the law officers or magistrates of the county.

When officially apprised by the Commissioners of Emigration of this unparalleled outrage, and that the sheriff of the county had not interposed either to protect the property of the State or to vindicate its laws, I felt myself called upon as sworn to see those laws executed, immediately to interpose the military arm, when the civil arm had proved itself either unwilling or unable to preserve order and protect property and life, and that, the life of the helpless sick.

I accordingly issued my proclamation, a copy of which is among the papers accompanying this communication, and ordered Major General Sanford of the first division, to detail forthwith from his command a sufficient force, to proceed to the Quarantine ground in order to prevent any further attack upon the buildings which it was deemed indispensable immediately to put up for the reception and shelter of the sick then there, and of those daily arriving from infected ports. A military detachment was accordingly encamped on the 11th September around the Quarantine enclosure. The new buildings were pushed forward vigorously, and thanks to the presence of the troops, uninterruptedly. I have deemed it proper still to maintain there a military occupation, as all the indications to be gathered from general rumor, the proceedings and inflammatory language of public meetings, and the inconceivable ruling of a county judge that the acts of deliberate incendiarism and assault upon the hospitals of the sick, were, under the circumstances, rightful and justifiable, seem to prove that no safe reliance can be placed either upon the disposition or the ability of the sheriff of the county or its magistrates, to protect the public property. It will be for you, sir, and the Legislature, to determine how and when this shall end. Meantime, as no legal provision exists for defraying the cost of such an exceptional case as this, I took the responsi-

bility, after consulting with the Comptroller, and with his full concurrence, of borrowing in the name of the State, but on my personal security, the money needed for the expense of this military movement and occupation. The sum thus obtained will, it is supposed, suffice for the necessary outlay of the troops, except their pay, until the Legislature shall have had time to consider and provide for the case. [See note 14.]

Immediately after the destruction of the Quarantine buildings, and without permitting the lawless conduct of the Staten Island incendiaries to divert them from the discharge of their duties under the law, the Commissioners undertook anew a survey of the points within the harbor of New York at which possibly an artificial structure might be formed for the purpose of Quarantine. The result of the examination was, that either a breakwater for the protection of floating hospitals, or an artificial island should be constructed in the lower bay. The Governor, Lieutenant-Governor and Comptroller, to whom the law confided the trust of deciding, in the last resort, upon the eligibility of any site selected by the Commissioners, determined before acquiescing in the recommendation, to ascertain if possible whether such an artificial work could be made without detriment to the harbor, and if so, at what probable cost. They accordingly addressed a letter to General Totten, chief of the engineer corps of the United States, asking the detail of a competent officer to make the requisite survey and estimate. This request was immediately and courteously complied with, and Captain Benham, the officer detailed, reported himself forthwith at Albany, and after receiving his instructions proceeded to execute the work, and you will receive herewith his official report.

As by the laws of the State, any county within which property is destroyed by a mob is made liable for the loss, the Attorney General, at my request, caused an investigation to be made before the judge of Richmond county, into the acts of violence which occurred on the nights of the 1st

and 2d September last; and has also instituted, together with the Commissioners of Emigration, who are trustees for the property at Quarantine, proceedings against the county of Richmond for the estimated value of the buildings, and other property of the State at the quarantine, destroyed by the mob on those nights. As a more flagrant violation of a known law can hardly be imagined, it is not to be doubted that so far as pecuniary indemnity can efface the evil and the memory of so great a wrong, the county of Richmond will be held responsible for the whole amount of the loss.

I must take leave, before concluding, to express my high sense of the alacrity and the steadiness with which the different military corps of the first division, detailed in succession to duty at the Quarantine, have performed their part. At an inclement season of the year, the citizen soldiers abandoning their homes and their ordinary pursuits, have cheerfully and patiently, with the most exact discipline and exemplary forbearance, subjected themselves to all the inconveniences, restraints and exposure of camp life, and thereby held in check the violence of the lawless, and assured the repose and safety of the helpless sick. The city of New York, I may say the State of New York, is happy and strong in such a corps of citizen soldiers ever ready to uphold the laws.

With great respect, your obedient servant,

JOHN A. KING.

Hon. E. D. MORGAN, New York.

GOVERNOR KING TO COMPTROLLER CHURCH.

"STATE OF NEW YORK:

EXECUTIVE DEPARTMENT,
ALBANY, *Sept.* 25, 1858.

SIR.—I felt it to be my duty, under the general power confided in me by the Constitution, "to see that the laws, were faithfully executed"[s] and in accordance with the gen-

[s] Const. 1846, art. 4, § 4.

eral spirit and intent of the law of 1845, chapter 69, to issue my proclamation on the 7th instant, denouncing the extreme acts of violence and outrages, and the burning of the State buildings, at the Quarantine station in the county of Richmond, on the nights of the 1st and 2d September, declaring that these acts had the general concurrence and approval of the people of the county; that its civil authorities had failed either to prevent these outrages or to aid in the arrest of the rioters; that the county of Richmond was in a state of insurrection; and that a military force would be detained and stationed at the Quarantine, in the place of the Metropolitan police force, then on duty there, to protect the buildings to be erected for the accommodation of the sick, and the cities of New York and Brooklyn, against pestilence and contagion. A military force of two hundred and fifty men stationed at the Quarantine, is in the performance of the duty assigned to it. And it will be necessary that the requisite funds should be provided without delay for its pay and support.

The object of this communication is to know whether I can rely on your department for the necessary funds to meet these demands, which arise from an exigency, in which I felt it my duty to take immediate and effectual measures for the vindication of the laws and the protection of the property of the State. Your early reply will oblige me.

With great respect, your obedient servant,

(Signed) JOHN A. KING.

Hon. S. E. CHURCH, Comptroller.

COMPTROLLER CHURCH TO GOVERNOR KING.

STATE OF NEW YORK:

COMPTROLLER'S OFFICE,
ALBANY, *September* 27, 1858.

SIR.— I have just received your favor, inquiring whether you can rely upon this department for the necessary funds

to pay the expenses of the military force stationed at the Quarantine establishment, in the county of Richmond, in pursuance of your proclamation declaring that county in a state of insurrection. I am aware that the 22d section, of the act of 1845, referred to in your note, directs the Comptroller to audit and pay the accounts for such expenses; but the 8th section, of the 7th article of the Constitution, prohibits the payment of any money from the Treasury of the State, except in pursuance of a specific appropriation, by a law passed within two years prior to such payment.

As no such appropriation has been made by the Legislature, I cannot draw the money from the Treasury for this purpose; at the same time I see no objection to the exercise of the duty enjoined by the Statutes, of auditing the accounts.

Whatever differences of opinion may exist as to the merits of the controversy which resulted in the unfortunate occurrences alluded to, no one, I think, can question the entire good faith of your Excellency in the measures adopted, nor that they were resorted to from a high sense of public duty, and I do not doubt that the Legislature will promptly respond to the demand for the necessary appropriation to pay the legitimate expenses incurred. [See note 14.]

Very truly,
Your obedient servant,
S. E. CHURCH.

To his Excellency, JOHN A. KING.

January 12. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 11, 1859.

"I transmit herewith a memorial of the Secretary of the New York State Inebriate Asylum, received by me. It urges an appropriation from the State Treasury, but the

present condition of the finances seem to me to forbid any such appropriation. I would suggest, however, for your consideration, whether it may not be desirable to enact a law rendering it the duty of the counties, under proper limitations, to support at the Asylum, the inebriates belonging to them respectively. A law has existed for some years, requiring the counties to support their insane at the State Lunatic Asylum at Utica. This is manifestly just, and has, I believe, been found to work well in practice. There seem to be good reasons for extending the application of the same principle to the case of inebriates, though the details of the law may probably require to be varied. [See note 11.]

E. D. MORGAN."

January 12. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 11, 1859.

"I transmit herewith the second report of the Special Commission in relation to common schools in the city of New York, together with the documents accompanying the same, viz:

1. Communication from the New York Society for the Promotion of Education among colored children.
2. Table showing population and school attendance by wards.
3. Letter from Hon. Samuel S. Powell, Mayor of Brooklyn, respecting truant officers.
4. Letter from A. B. Clarke.
5. Letter from W. F. Reed, Esq. of Boston, with reference to truant officers, with weekly report of a truant officer of Boston.
6. Another communication from Mr. Reed.
7. Cost of objectionable school buildings.
8. List of corporate schools participating in the School Fund.

9. Proposed act revising the law in relation to common schools in the city of New York.

The recommendations contained in the report are entitled to your careful attention.

E. D. MORGAN."

See Assembly Document No. 29 for the text of the communications mentioned in the message.

January 12. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 11, 1859.

"I transmit herewith the report of A. D. Bache, on the Physical Survey of the Harbor of New York, and a copy of the letter of Prof. Bache to my predecessor, accompanying the same. Also a letter from Prof. Bache, to my predecessor, with reference to the map known as the 'Harbor Commissioners' Map of the harbor of New York.'

E. D. MORGAN."

See Assembly Document No. 18 for the letters from Prof. A. D. Bache. The first letter requests a further appropriation of $2,500 for completing the work.

January 13. To the Assembly:

"ALBANY, *Jan.* 13, 1859.

"I transmit herewith the annual report of the Commissioners for the removal of Quarantine, which has this day been received by me.

It gives a history of the proceedings of the Commissioners during the past year, but I believe mentions no facts not already officially known to you, except the fact that the Commissioners have advertised proposals for the construction of a block or island on Old Orchard Shoals.

This action of the Commissioners seems to proceed upon a misunderstanding of the course taken by the Governor,

Lieutenant-Governor, and Comptroller, in approving the plan of Capt. Benham, as will be seen by reference to the copy of that approval, communicated to the Assembly on the 12th instant. It was a qualified approval, and in substance referred the whole matter to the Legislature.

The time within which proposals are, according to the Commissioners' advertisement, to be received, soon expires. In view of these facts, there seems to be a necessity for prompt action on the part of the Legislature. [See notes 8 and 14.]

E. D. MORGAN."

[See Assembly Document No. 11.]

January 13. To the Assembly:

"ALBANY, *Jan.* 13, 1859.

"I transmit herewith the annual report of the Board of Commissioners of the Metropolitan police.

The report contains much information, and recommends various amendments of the existing law, which are worthy of your attention. Among the latter are, that asking power to employ not exceeding five hundred special policemen on election days; that depriving aldermen of the power to discharge prisoners from the station houses; that giving power to destroy counterfeit bank note plates; that asking an alteration of the basis upon which the expense of the force is distributed among the several counties comprising the district, so that it shall be based, not as at present, upon the valuation of the real and personal property, but upon the number of policemen employed in the counties respectively; and that with reference to the more effectual enforcement of the laws of the State with reference to the observance of the Sabbath.

These amendments seem necessary for the efficient enforcement of the law.

The Commissioners recommend an amendment of the

law, so as to give them power to appoint three hundred and fifty additional patrolmen in the city and county of New York. Since the report was made, however, the supervisors of that county have authorized the appointment of nearly two hundred additional patrolmen.

E. D. MORGAN."

See Assembly Document No. 50.

January 25. To the Senate: Transmitting the annual report of the Commissioners of Pilots with a draft of a proposed bill for the enforcement of the existing law.

January 26. To the Assembly:

"ALBANY, *Jan.* 25, 1859.

"I transmit herewith two communications from Hon. Lewis Cass, Secretary of State, covering extracts from and copies of dispatches from the Hon. Theodore S. Fay, Minister resident of the United States, at Berne, in Switzerland. Mr. Fay points out defects which experience has shown to exist in the laws of this State, with reference to taking acknowledgments in foreign countries. The evils to which he refers are obvious, and should be at once remedied by legislation.[21]

E. D. MORGAN."

February 2. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 2, 1859.

"In my annual message I stated that there was an unsettled question of boundary with the State of Connecticut,

[21] The act of 1875, chap. 136, authorized the Governor to appoint not more than five commissioners in each city in any foreign State or country, who were authorized to take the proof or acknowledgment of deeds or other written instruments, to be used in this State. General provisions relating to foreign acknowledgments are contained in the real property law of 1896, chapter 547, section 250.

concerning which I had not then been able to obtain the requisite information. Since that message was communicated to the Legislature, I have gathered some additional information which convinces me of the propriety of immediate action.

The boundary between the States of New York and Connecticut has been unsettled for more than two centuries. It is not necessary to enter into the controversy here, further than to mention that in 1725 and 1731, the boundary line was officially defined, as was then supposed finally and beyond the possibility of dispute, an elaborate survey having been made and numerous monuments erected. In the lapse of time these monuments have been in a great measure obliterated, and great uncertainty has consequently prevailed along the border, as to the precise position of the boundary line. In May, 1855, the Legislature of Connecticut passed resolutions appointing two Commissioners to meet such as might be appointed by this State, to ascertain and mark the boundary, and requested the cooperation of New York. Our Legislature responded to this request, and on April 9, 1856, by concurrent resolutions, authorized the Governor to appoint three Commissioners to define the line. Gov. Clark, on the same day, appointed Gen. Field, Samuel D. Backus, and Jonathan Tarbell, Commissioners under these resolutions. They entered upon their duties about the first of June, and from the 23d of that month till November 1, the Commissioners of both States, with a surveying party, were engaged in running the line. The result was that for a distance of about thirty miles, commencing at Long Island Sound and proceeding northward by a zig-zag line, there was a substantial agreement between the Commissioners as to the position of the line, the ancient monuments being readily discovered. For a distance of about fifty miles running northward from what is called the Ridgefield angle to the southern boundary of Massachusetts, a line was run by the surveying

party, which the Commissioners on the part of Connecticut were willing to accept, and which they claim was run under the authority of the Commissioners of this State, and was established as the true boundary line by their acts. The latter, however, maintain that the line so run was merely an experimental line, which is as a general thing to the west of the true boundary line as designated by traditions and monuments, and that it has never been established by any act of theirs. Upon this point connected with some questions of expense the Commissioners of the two States, on November 6, 1856, came to an entire disagreement. The disputed district, consisting of a strip of land which runs north and south for a distance of about fifty miles, and which is at its widest part forty-two rods wide, contains about twenty-six hundred acres. Most of this district is mountainous and of no great value, but at one point a portion of a village of two or three hundred inhabitants is included in the disputed territory.

The disagreement between the Commissioners of the two States soon assumed a bitter and personal form, so that there has been no official definition even of thirty miles of line about which there is a substantial agreement between the representatives of the two States. Since this disagreement, which was followed by a withdrawal, on November 15, of all proposals on the part of the Commissioners of this State, nothing has really been accomplished, though several formal communications have passed between the Commissioners. Even the proper division of the expenses attending the attempted settlement of the boundary remains undetermined, the representatives of both States claiming to have paid more than their share. The dispute upon this point seems mainly to turn upon the question whether Connecticut is responsible for any portion of the expense of a surveying party employed apparently by the New York Commissioners.

The original resolutions, under which the Commis-

sioners of this State were appointed, made no appropriation for the expenses of the Commission, though they authorized the Commissioners to incur them. But in 1858 a law was passed appropriating seven thousand dollars for the purpose, and fixing the personal compensation of the Commissioners at six dollars per day each. The entire amount thus appropriated was drawn from the treasury prior to March 23, 1858, while a clause appropriating about two thousand dollars additional was inserted in the supply bill of that year, but stricken out in the senate and referred to the present Legislature.

I cannot resist the conclusion that the expenses of this Commission, on the part of this State, have been unnecessarily large. The Comptroller of the State of Connecticut states the entire amount drawn by the Commissioners of that State at twenty-four hundred and twenty dollars, while this State has already paid seven thousand dollars, and there are bills to the amount of nearly two thousand dollars more outstanding.

Of this sum a considerable proportion has accrued since negotiations have been broken off between the representatives of the different States, and the amount is constantly increasing, without the least probability of anything being accomplished.

Whether, however, the expenses hitherto have or have not been unnecessarily large, there seems no reason to doubt that this question of boundary can now be settled at a small additional expense, and in a brief period, the line already surveyed being taken as a basis.

I would suggest, therefore, that the resolutions of 1856 be rescinded, and that a law be passed authorizing the appointment of two Commissioners, with full powers to establish the line where it may be deemed best, after consultation with proper representatives of Connecticut, and that their compensation, and the entire expense they are allowed to incur, be fixed in the bill. By such a course the

matters in dispute can be settled within a month, after good weather commences in the spring.

Connecticut has honorably discharged her Commissioners, but has left authority with the Governor to appoint others with power to ascertain and settle the boundary line, and this State must communicate with the Governor of that State, and procure some action on his part. Under no circumstances should the present condition of things be allowed to continue another year. What has been done has thus far only served to render matters more unsettled than before. Residents near the border know not to what laws they are subject nor in which State they should vote, while officers of justice and of revenue hesitate to exercise their authority. Consequently the laws are not obeyed and the taxes are not collected. Justice to our own citizens and to our neighbors demands that this state of things should not be allowed to continue.

E. D. MORGAN."

February 8. To the Assembly:

"ALBANY, *Feb.* 8, 1859.

"I transmit herewith, in compliance with the request contained in them, copies of certain joint resolutions passed by the Legislature of the State of Michigan, with reference to the improvement of the St. Clair Flats. They relate, as will be seen, to the improvement of the facilities of communication with the rapidly developing States of the West, in which this State is more deeply interested than any of her sister States.

E. D. MORGAN."

February 18. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *Feb.* 17, 1859.

"In reply to the resolution of your honorable body, requesting me to communicate whether any reports of pardons or reprieves have been made from the Executive De-

partment, as provided by section five, article four of the Constitution, I have the honor to state that there is nothing on file or on record in this department which would enable me to answer this inquiry. The fact that the Executive Department has but recently become a department of record, probably accounts for this. I have caused an examination to be made of the published documents of the last few years, for the purpose of ascertaining whether they would not afford the information desired. Among these documents no report made by a Governor has been found, except one made by Governor Hunt, at the close of his term of office, December 31st, 1852. I am informed that Governor Seymour made such reports, but they are not to be found among the printed documents. The earlier Governors may have made such reports, but I find none. I learn that neither of the last two Governors made any, and that my predecessor omitted it because he considered that the Secretary of State, in making his annual report, acted on behalf of the Governor, and because this was, in his opinion, a compliance with the requirements of the Constitution.

It is my intention to make such reports, annually, during my term of office. I have, thus far, pardoned two persons. Of the propriety of pardon, in one of the cases, I have no doubt; but subsequent information has raised a doubt in my mind, as to the other. Fortunately the convict had but a month more to serve.

E. D. MORGAN."

February 28. To the Assembly:

Veto of a bill entitled "An act to extend the time for the collection of taxes in the city of Oswego, and in the several towns in the county of Oswego, and in Duanesburgh and Rotterdam in the county of Schenectady." [See note 18.]

"The reasons which induce me to withhold my signature from this bill, are indicated in the following passage from my annual message to the Legislature, to wit:

'It has been, for several years, the custom for certain counties to make application to the Legislature, to extend the time for the collection of taxes, which applications have usually been granted. Being only partial, the operation is necessarily unequal, and ought to be discouraged and discontinued.'

If there really exists any intrinsic difficulty in collecting the taxes within the time now prescribed by law, a general act enlarging the time should be passed, and an end be put to local and special legislation of this nature. I am not prepared to say that reasons do not exist for such a change. The time was, however, extended for a month throughout the State, except in a few cities, by a general law passed in 1857, and still in force, and strong reasons should exist to lead to another change so soon.

Should such a change, however be made, the law should contain a stringent clause forbidding the use of the moneys collected by the officers, and should provide for the more speedy payment of taxes into the treasury of the State.

I feel confident, however, that the difficulty in collecting taxes is in very many cases rather accidental than necessary. Experience has shown that applications for extension of time nearly always have their origin in the neglect of duty on the part of some of the officers charged with the imposition or the collection of the taxes, or in an indisposition rather than an inability to pay within the time required.

I can perceive no reason why officers should be encouraged in such neglect by the intervention of the Legislature. They should rather be left to answer to the people from whom they directly derive their powers. Under any circumstances, it is my deliberate intention, so far as is properly within my province, to hold every officer of every nature to a strict and careful compliance with the Constitution and the laws, without regard to the practice which may have hitherto prevailed, or to the temporary inconvenience which such a course may perhaps at first cause to individ-

uals. I am fully satisfied that only by this course can regularity and economy be restored and maintained in our system of government.

The indisposition to pay taxes within the time required by law, does not extend to the great mass of the community. Men in moderate circumstances do not, as a general thing, ask for or avail themselves of delay. They know when the taxes are due, and are prepared to pay them punctually. But those in more prosperous circumstances, who can, if it becomes necessary, pay at any time, frequently neglect or postpone payment to the last moment, and it is for their benefit or for that of some town or county officer that these applications are generally made in those cases in which they are not caused by the neglect of duty already referred to.

Entertaining these views, I am compelled to return the bill for reconsideration to the Assembly, in which it originated."

The bill was not passed over the veto.

March 3. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March 3d*, 1859.

"I transmit herewith the second annual report to the Legislature of the trustees of the State Agricultural College. It shows that the erection of a large and substantial College building has been contracted for; that the foundations have been laid, and that the work of erection is to be vigorously prosecuted as soon as the season will permit. It is hoped that the building may be completed during the present year; but as the trustees are determined not to open it for the reception of students until everything is in order, it is possible that no students will be received until the spring of 1860. The trustees indicate in general terms the principles which will govern them in the management

of the institution. Under their guidance I feel confident that it has before it a long career of usefulness, not only to its immediate beneficiaries, but to the people at large.

E. D. MORGAN."

March 5. To the Legislature: In announcing the approval of certain bills, the Governor sent the following memorandum relative to the approval of a bill extending the time for the collection of taxes:

"I have this day also approved the bill entitled 'An act to extend the time for the collection of taxes.' Although this is a general bill, extending the time equally throughout the State, I have signed it with great reluctance, and only for the reason that many of the assessors, supervisors and collectors seem to have presumed that an extension of time for collecting the taxes would be granted, as a matter of course, and have therefore allowed the legal time to expire without doing so. There cannot be the same excuse hereafter, and it is my intention to refuse my assent to any bill of similar purport that may be presented to me next year."

[See veto message of February 28.]

March 7. To the Assembly:

Veto of a bill entitled "An act to authorize the Board of Directors of the Sennett and Auburn Plank Road Company to assess the stockholders of said company for the payment of the debts thereof, and to make the same into a gravel road."

"The bill provides in substance that on procuring the written consent of persons holding a majority in amount of the capital stock of the company, the directors are authorized to call upon the stockholders to contribute *pro rata* such sums as shall be sufficient to pay both the present indebtedness of the company, and the cost of converting the

road of the company into a gravel road, and putting it into good repair as such, provided, however, that the amount of such assessment shall not exceed fifteen per cent. on the amount of the stock held by any stockholder. In case of refusal or neglect to pay the assessment within a limited period, the directors are authorized to forfeit the delinquent stock to the company, but they cannot enforce payment by action.

If this bill merely proposed to give the power to lay an assessment for the purpose of paying the existing debts of the company, there would be no very strong objections to it, except that it would be superfluous. The stockholders are already individually liable for the debts of the company, and existing general laws, and particularly chapter 390 of the Laws of 1855, provide an apparently fair and equitable mode of meeting this liability. If, on the other hand, the object of this bill were merely to enable the company to transform their road into a gravel road there would be no objection, except that it would be unnecessary, for that power is already expressly given by chapter 546, of the Laws of 1855. But besides giving these two superfluous and unnecessary powers, the bill seeks to give another and more objectionable power. It enables the holders of a mere majority of the stock to compel the other stockholders, under penalty of forfeiture, not only to pay the existing debts, but to pay furthermore the expense of altering the road to a gravel road and then putting it in proper repair. In other words, the stockholders are to be compelled to increase their subscriptions. Having subscribed and paid for their stock at a certain par value they are to be compelled to pay a certain percentage additional. I am not informed whether there would be in this particular case any objection on the part of the stockholders, but I presume that there would be, for if the consent of all could be obtained the intervention of the Legislature would not be needed or sought. If there would be any such objection, even on the part of a single stockholder, the Legislature certainly ought not, even if

it has the power, to seek to compel such further payment. It will readily be perceived that there may be instances in which holders of stock would fail to pay the assessment merely from inability. This would be the case especially with those in moderate circumstances, and those who hold stock in trust. Yet if this bill becomes a law they may be at once deprived of their stock without any fault on their part, and after they have paid all that they bound themselves to pay.

This objection obviously involves an important principle reaching far beyond the interests affected by this particular bill. If such a provision is right in the case of the Sennett and Auburn plank road company, it is equally right in the case not only of every other plank road company, but in that of every corporation in the State.

"Believing that the provision referred to is opposed to every principle of justice and good faith, I feel confident that when the attention of the members of the Legislature is distinctly called to it they will see the propriety of reconsidering their action."

The bill was not passed over the veto.

March 10. To the Assembly:

"ALBANY, *March* 10, 1859.

"In 1853 the Legislature of this State passed an act entitled 'An act to aid the erection of a monument commemorative of the Declaration of American Independence,' which provides, in substance, that whenever eight other of the original thirteen States shall have passed a similar act, this State will pay her share of the expense of constructing and maintaining a monument 'in the public square adjoining Independence Hall in the city of Philadelphia, to commemorate the Declaration of American Independence.' The plan, design, materials and expense are to be determined by a board of trustees of which each State is

to appoint one. The whole expense is not to exceed one hundred and fifty thousand dollars, and the States are to contribute in proportion to their respective representations in the House of Representatives in Congress. The act does not make an appropriation, but provides that the trustees shall report 'the design, plan and expense of the monument as proposed by them, and the said statement of proportionate contributions,' and 'when the States shall have made provision for contributing their respective quotas' the trustees 'shall be authorized to proceed and construct' the monument; and it further says, that 'the Legislature will make provision for the payment of her contribution in such instalments as the said board of trustees shall declare to be necessary.'

Although the law was passed in 1853, and although a commissioner has been appointed under it, nothing further has or could be done because the co-operation of the requisite number of States had not been obtained. I am now informed that the States of New Jersey, New Hampshire, Rhode Island, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland and Georgia have passed similar acts, and that a meeting of trustees is to be held soon for the purpose of perfecting a plan and providing for the erection of the monument. As soon as this is done, and probably before another session of the Legislature, this State will be called upon to pay its share of the cost.

Before any expense has been incurred on the faith of former action of this State, and while no principle of honor forbids it, I deem it my duty to suggest to the Legislature the repeal of this law. If the question were a new one there would certainly be strong reasons against the appropriation of the public money for such a purpose. The monument is to be located in the State of Pennsylvania, and while New York may, by the act, be called upon to pay one-third of the entire expense, it is allowed only the same voice in its expenditure that is given to the State of Dela-

ware, which cannot be required to pay more than one one-hundredth part of the expense.

At a period when it has become necessary to lay a direct tax for the support of the Government, for the completion of the public works, and for the payment of a portion of the interest on the funded debt, and when many even of our deserving charities are refused aid, we ought, while seeking to increase the public revenue wherever it can properly be done, to discontinue every unnecessary expenditure.

For nearly a century the Hall in which the Declaration of Independence was adopted has been a sufficient monument, and while it stands, will be so regarded by all who visit it. If it is thought desirable for the people of this State to contribute to the erection of another monument to commemorate that great event, such contribution can be made at some future period, when taxation is less oppressive than now. At the present time, I cannot persuade myself that a single dollar should be appropriated for that purpose.

Should the limit of one hundred and fifty thousand dollars be reached by the trustees — and experience certainly does not warrant the belief that the sum expended will fall much below that amount — the contribution of this State would exceed fifty thousand dollars, being more than one-third of the whole amount, and three times as much as that of any other State, except Pennsylvania.

For the reasons herein set forth, and in view of the present condition of the finances of the State, I recommend the repeal of the law of 1853.

E. D. MORGAN."

March 12. To the Senate:

Veto of a bill entitled "An act relating to fisheries in the town of New Utrecht in the county of Kings."

"It is not only obscurely drawn, but it is so objectionable in its provisions, that I cannot give to it my approval.

It provides that the inhabitants of New Utrecht may, until June, 1860, set pike or hoop and gill nets, and drive poles and stakes in a certain portion of New York Bay, from which they are now excluded by the law of 1857, establishing regulations for the port of New York. This last mentioned law, which is one of several that have been enacted within a few years for the preservation of the harbor of New York and the freedom of navigation therein, forbids the driving of any poles in water of greater depth than six feet at mean low tide. The present bill proposes to relax this restriction in favor of the inhabitants of a single town, and to allow them to place their nets and poles in a diagonal line through the middle of and across the principal channel of the harbor above the Narrows in water as deep as fifty feet. It is true the bill seems to give the Harbor Commissioners a certain power to regulate the placing of the poles, but this power in fact amounts to nothing. The Commissioners are only authorized to bring the poles as much nearer the *west* shore of the narrows as they shall decide is necessary to prevent their being a hindrance to safe navigation.

It is a little difficult to ascertain the precise intent of this provision. If, however, the Harbor Commissioners should exercise the power given to them, the utmost that they could do would be to carry the line to the shore of Staten Island, at the Narrows. Should this be done it would perhaps be doubtful whether the inhabitants of New Utrecht would not have the power to place stakes entirely across the channel, directly at the Narrows. However this may be, the bill fails to give the Harbor Commissioners any power to control the placing of the stakes anywhere to the *east* of the line mentioned in it. A reference to a map of the harbor will show that that portion of the harbor from which the supervisory power of the Commissioners is excluded is a large and important portion, and one in which

fish poles certainly ought not to be allowed to be placed unless there is some supervisory power to regulate them.

It is probably a clerical error in the bill that it refers to a law of 1849 by its section, but omits to give the chapter of the laws of that year.

My objections to this bill are briefly that it gives rights that ought not to be granted to any one without control, and which I feel sure would not have been granted had the members of the Legislature examined the bill more carefully, and been more fully acquainted with the locality. But if granted to any one, the grant should not be limited to the inhabitants of a single town, and should be carefully defined by unambiguous provisions."

The bill was not passed over the veto.

March 17. To the Assembly:

Veto of a bill entitled "An act to change the name of the 'Ministers, Elders and Deacons of the Protestant Reformed Dutch Church' of Duanesburgh to the First Presbyterian Church of Duanesburgh."

"In 1853 a law was passed in accordance with the spirit of the Constitution, giving to judges of the Supreme and county courts the power to change the names of religious corporations. It authorizes the judge, on a simple petition, to grant an order allowing any corporation to assume a new name when he is satisfied by affidavit 'that the name of such corporation by reason of the change of its location or place of worship, or the name of the place in which its place of worship is situated, or any other change of the circumstances with reference to which its name was adopted, has become incongruous or inconvenient, or that the location or character of such corporation will be more correctly or effectually designated by such change of name.'

These provisions are very broad, and the closing sentences seem adapted and intended to cover every possible

reason for a change of name. If the existence of so comprehensive a law were not constantly forgotten, I feel sure that the parties interested would not have desired or the Legislature have passed the bill entitled 'An act changing the name of the Ministers, Elders and Deacons of the Protestant Reformed Dutch Church of Duanesburgh to the First Presbyterian Church of Duanesburgh.' Believing, that the object sought by this bill can be easily accomplished under the general law, I return it, without my signature, to the Assembly, (in which it originated,) for the purpose of calling the attention of the Legislature to the very comprehensive provisions already referred to, which were in my opinion inserted to meet precisely such a case as the present one."

The bill was not passed over the veto.

March 29. To the Assembly:

Veto of a bill entitled "An act to annex a part of the town of Italy in the County of Yates to the town of Naples in the county of Ontario."

"The express provisions of the Constitution seem to require that I should withhold my approval from the bill. The Constitution provides (article 3, section 5,) that the State shall be divided into Assembly districts at fixed periods, and that the districts shall not be changed between those periods. The county of Yates now forms by itself one Assembly district, and the bill referred to proposes to transfer a small portion of that district into another district in the county of Ontario. The reasons for desiring the change are perfectly satisfactory, but the plain language and intent of the Constitution forbid its accomplishment at present. If the territory sought to be transferred contained a populous town, I feel sure the constitutional objection would have prevented even the introduction of such

a bill, on account of its obvious conflict with the intent of the framers of that instrument, which was to prevent the frequent alteration of the Assembly districts for partisan purposes. I cannot perceive that the alteration would be any the less a violation of the Constitution, because the territory proposed to be transferred from one Assembly district to another contains in this instance but a single inhabitant, or even if it contained no inhabitants at all. In the latter case the evil the Constitution seeks to prevent could not, it is true, ensue, but the language that is used in that instrument obviously refers to territory. It is the physical boundaries which are forbidden to be changed, though the object sought to be prevented was a transfer of inhabitants.

I therefore return the bill to the Assembly, in which it originated."

The bill was not passed over the veto.

March 29. To the Assembly:

Veto of a bill entitled "An act to change the corporate name of the North Protestant Dutch Church of Gowanus."

My reasons for returning this bill " are the same as those stated in my message accompanying the return, without my signature, of the bill entitled 'An act changing the name of The Ministers, Elders and Deacons of the Protestant Reformed Dutch Church of Duanesburgh, to the First Presbyterian Church of Duanesburgh,' and are in brief that an existing general law expressly provides for accomplishing the object sought, and that in all such cases application for special acts should be discouraged. The time of the Legislature is too valuable to be expended upon superfluous enactments."

The bill was not passed over the veto.

April 4. To the Assembly:

Returning for amendment the bill entitled "An act to provide the means for the enlargement and completion of the canals of this State specified in section three of article seven of the Constitution, for the fiscal year commencing October 1, 1859, and for other purposes."[22]

The bill "appropriates the sum of $125,000 to pay interest on certain drafts on the treasury, but through an apparently accidental omission, does not specify the rate of interest. The result is, that in the absence of any limitation, interest is allowed at the rate of seven per cent. per annum, which cannot have been the intention of the Legislature, as that is a higher rate of interest than the State has heretofore paid. I therefore return the bill to have a correction made in this respect."

April 5. To the Senate:

Returning for amendment a bill entitled "An act making appropriations for the canal debt, and the maintenance of the canals for the fiscal year commencing on the first day of October, 1859, and to supply a deficiency in a former appropriation."[23]

"There seems to be a clerical error in the bill. * * * The fourth paragraph reads 'For the payment of interest, and to pay the principal of the canal debt as it existed on the first day of June, 1856, the sum of $1,700,000.' It seems to be obvious that the date should read 'forty-six' instead of 'fifty-six,' and I return the bill for the purpose of having that correction made."

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22 The canal improvement bill was amended and passed again, and became a law, chapter 149, on the 6th of April.

23 The canal debt bill was amended and passed again, and became a law, chapter 221, on the 11th of April.

April 5. To the Senate:

Veto of a bill entitled "An act to incorporate the Philomathian Society for Mutual Improvement, in the village of Sherburne, in the county of Chenango."

"The Constitution (article 8, section 1,) provides that 'corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the Legislature the objects of the corporation cannot be attained under general laws.'

The reasons which led to this provision and the evils it sought to prevent were well stated by Governor Hunt in a communication to the Legislature in the year 1852:

'The limitations imposed by the Constitution upon the legislative power in respect to the creation of bodies corporate by special charters, were the result of wise deliberation, and were intended for salutary ends. Among other important considerations which induced the Convention to prescribe general laws, it was deemed desirable to discontinue the practice of creating a multiplicity of corporations by partial and unequal enactments infinitely varying in character according to the peculiar views of applicants for special immunities. Another object sought to be accomplished by the change of policy introduced by the new Constitution was the relief of the Legislature from the constant and numerous applications for charters, which experience had shown to be unfavorable to wise and matured legislation on subjects of common concern involving the more general interests of the community.

'Notwithstanding the adoption of general laws to facilitate the formation of corporations for charitable, benevolent, religious, missionary, scientific and literary objects, for banking, for roads, bridges, manufactures and other purposes connected with the material and social progress of the State, numerous applications continue to be made to the

Legislature at every session for special franchises to allow the objects which have been so fully provided for by liberal enactments, framed in accordance with the spirit and design of the Constitution. A growing tendency to yield to solicitations of this character and to grant particular acts for the attainment of purposes already provided for by general laws, is but too apparent. It becomes our imperative duty to recur to the principles so carefully established by the organic law and to adhere to them with watchful fidelity.'

What then is the meaning and extent of the Constitutional provision already quoted?

Several of the Governors have taken the ground that it renders unconstitutional all special acts of incorporation for purposes already provided for by general laws. Thus Governor Fish, in 1850, in returning a bill to the Legislature said: 'In the absence of any general law authorizing the formation of corporations for any particular object, the enactment of a special act incorporating a company for such object, may perhaps in some cases be assumed as an indication of the opinion of the Legislature that in its judgment these objects cannot be obtained under general laws. But the enactment of the general law, above referred to, establishes that the objects of corporations of the character of that whose charter the bill before me proposes to extend, are such as can, in the judgment of the Legislature, be attained under general laws. Hence it follows clearly that the Legislature has not the power to create by a special act a corporation for these objects.'

The principles here enunciated seem to me sound, and have been accepted as such. Indeed any other doctrine would render the Constitutional prohibition nugatory.

The general principles, therefore, which must guide me in considering special bills relating to corporations other than those for municipal purposes, are involved in the question whether there is a general law providing for the same general objects. If there is, special laws are, in my opin-

ion, unconstitutional, and I cannot give to them my approval.

For these reasons, while heartily approving the objects sought to be accomplished by it, I am compelled to return without my approval the bill entitled 'An act to incorporate the Philomathian Society for Mutual Improvement, in the village of Sherburne, in the county of Chenango,' the objects of which can be accomplished under the 'Act for the incorporation of benevolent, charitable, scientific and missionary societies,' passed in 1848, or the 'Act for the incorporation of library companies,' passed in 1853."

The bill was not passed over the veto.

April 6. To the Senate:

Returning for amendment a bill entitled "An act to amend an act passed April 15, 1857, entitled 'An act to provide for the appointment of commissioners for the adjustment and payment of certain claims for the services of the militia of this State in the war of 1812.'"[24]

"The act was passed in the Senate on March 25, but only passed the Assembly on the 2nd instant. It provides that the Commissioners appointed under a former act shall surrender up their papers, &c., to the Commissioners named in this act 'on or previous to the tenth day of April next.' The intention undoubtedly was to have the surrender made on or previous to the 10th of April, in the present year, but as the act dates only from the day of its signature, the result would be, if signed in its present form, that in an important provision it might not take effect till the year 1860. Believing that the intention of the Legislature was otherwise, I return the bill for correction."

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[24] The militia claims bill was amended and passed again, and became a law, chapter 176, on the 8th of April.

April 7. To the Assembly: Transmitting the Annual report of the Adjutant General.

April 8. To the Assembly:

"ALBANY, *April* 7, 1859.

"I have this day received from the New York Historical Society the accompanying letter with the manuscript volume referred to therein. It will be seen that that society is in possession of the only printed copy known to exist of the journal of the Assembly, at the first meeting of its Fourth Session, which commenced at Poughkeepsie, in Dutchess County, on September 7th, 1780, and closed October 10th in that year, while the manuscript is lost. In view of this fact, and with the commendable desire of completing, as far as possible, the legislative records, the Historical Society has caused to be prepared for presentation to the State an elegant manuscript copy of the journal.

This is a gift of no ordinary value, and the society is richly entitled to the thanks of the State. As the volume is of great importance, and supplies a deficiency which till recently it was supposed could never be supplied, and as there are many sets of the legislative records to which this volume would be a valuable addition, I take the liberty of suggesting that a limited number of copies should be printed and distributed under the direction of the Regents of the University. The copy received from the Historical Society should be placed in the State Library.

E. D. MORGAN."

On the same day the Assembly adopted the following resolutions:

"*Resolved,* That the thanks of this House be presented to the New York Historical Society, for the beautifully engrossed copy of the Assembly journal of the first meeting of the Fourth Session, begun at Poughkeepsie, September 7, ended October 10, 1780, thus supplying to the State the

only deficiency in the journals since the organization of the State government in 1777.

Resolved, That this copy be deposited in the State Library, and that the Regents of the University be directed to procure the printing of five hundred copies of the same, in accordance with the recommendation of the Governor in his message communicating the presentation of the volume."

April 8. To the Assembly:

Veto of a bill entitled "An act to incorporate the Mamaroneck and New Rochelle Steam Navigation Company."

" There is on the statute book a liberal and comprehensive general law, providing for the organization of corporations formed for the purpose of navigating lakes and rivers, passed in 1854, to which, and to the acts amendatory thereto, the corporation proposed by the bill returned is expressly made subject. In view of this fact, I regard this special act as unconstitutional, and cannot give to it my approval, for the reasons expressed in the following extract from a message recently sent to the Senate:

The Constitution (article 8, section 1) provides that ' corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.'

The reasons which led to this provision, and the evils it sought to prevent, were well stated by Governor Hunt, in a communication to the Legislature, in the year 1852:

' The limitations imposed by the Constitution upon the legislative power, in respect to the creation of bodies corporate by special charters, were the result of wise deliberation, and were intended for salutary ends. Among other important considerations which induced the convention to pre-

scribe general laws, it was deemed desirable to discontinue the practice of creating a multiplicity of corporations by partial and unequal enactments, infinitely varying in character according to the peculiar views of applicants for special immunities. Another object sought to be accomplished by the change of policy introduced by the new Constitution, was the relief of the Legislature from the constant and numerous applications for charters, which experience had shown to be unfavorable to wise and matured legislation on subjects of common concern, involving the more general interests of the community. Notwithstanding the adoption of general laws to facilitate the formation of corporations for charitable, benevolent, religious, missionary, scientific, and literary objects, for banking, for roads, bridges, manufacture and other purposes connected with the material and social progress of the State, numerous applications continue to be made to the Legislature, at every session for special franchises to attain the objects which have been so fully provided for by liberal enactments, framed in accordance with the spirit and design of the Constitution. A growing tendency to yield to solicitations of this character, and to grant particular acts for the attainment of purposes already provided for by general laws, is but too apparent. It becomes our imperative duty to recur to the principles so carefully established by the organic law, and to adhere to them with watchful fidelity.'

What then is the meaning and extent of the Constitutional provision already quoted?

Several of the Governors have taken the ground that it renders unconstitutional all special acts of incorporation for purposes already provided for by general laws. Thus Governor Fish, in 1850, in returning a bill to the Legislature, said:

'In the absence of any general law authorizing the formation of corporations for any particular object, the enactment of a special act incorporating a company for such

object may, perhaps, in some cases, be assumed as an indication of the opinion of the Legislature that in its judgment these objects cannot be attained under general laws. But the enactment of the general law, above referred to, establishes that the objects of corporations of the character of that, whose charter the bill before me proposes to extend, are such as can, in the judgment of the Legislature, be attained under general laws. Hence it follows clearly that the Legislature has not the power to create, by special act, a corporation for these objects.'

The principles here enunciated seem to me sound, and have been accepted as such. Indeed, any other doctrine would render the constitutional prohibition nugatory.

The general principles, therefore, which must guide me in considering special bills relating to corporations other than those for municipal purposes, are involved in the question whether there is a general law providing for the same general objects. If there is, special laws are in my opinion unconstitutional, and I cannot give to them my approval.

I am aware that there is one difference between the provisions of the general law and the special act. The general law provides that no company shall be organized with a capital of less than fifty thousand dollars, but the bill before me gives the company the right to commence with a capital of fifteen thousand dollars. After careful consideration, I am unable to see that a principle of constitutional construction is to be affected by such a variation as this. If the mere insertion of a less amount of capital than the general law allows is to avoid the constitutional prohibition, we shall have the anomaly that a special charter can be legally granted with a capital of forty-nine thousand dollars, but cannot be with a capital of fifty thousand dollars. There certainly cannot be any such sliding scale of constitutionality. On this point I concur in the language used by Governor Hunt, in returning, without his approval,

a bill providing a different mode of electing trustees from that provided under a general law, in which he says:

'If such a variation is admitted to be sufficient to justify the Legislature in granting a special act of incorporation, the constitutional prohibition referred to would soon become practically inoperative. One of the objects of having a general provision to govern all cases of the same character in the formation of corporate bodies, would be entirely defeated by making a change in the mode of organization, the ground for special legislation.'

If the Legislature is of the opinion that the existence of companies with a smaller capital than that now allowed by the general law is desirable, the proper way seems to me to be to amend the general law in that respect.

I would gladly have approved the bill herewith returned, for the persons interested are friends and acquaintances, and the portion of our State sought to be benefited is one in which I have a peculiar personal interest, but I cannot do so consistently with my ideas of duty."

The bill was not passed over the veto.

April 9. To the Senate:

Returning for amendment, a bill entitled "An act to amend the charter of the Sun Mutual Insurance Company of New York."[25]

"At the request of the parties interested, I return this bill. It is objectionable in some of its provisions, giving to the company powers which are at once unusual and inconsistent with the general laws on the subject, and which, I am informed, are not sought by the company to the extent they are granted. I therefore return the bill for correction."

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[25] The Sun Mutual Insurance Company bill was amended and passed again and became a law, chapter 225, on the 11th of April.

April 12. To the Senate:

"ALBANY, *April* 11, 1859.

"At the request of Governor Fish, I desire to inform your honorable body, that since my communication in reply to a resolution of the Senate dated on the 18th February last, I have learned by an examination of documents, to which he has referred me, that reports of pardons were duly made by him during his term of office.

It is not improbable that an examination of documents in the possession of the Senate, would show that other governors also made similar reports.

E. D. MORGAN."

April 13. To the Senate:

Returning for amendment, a bill entitled "An act to incorporate the Corpus Christi Ship Channel Company."[26]

"At the request of the friends of the bill, I return it. By inadvertence it imposes no obligation to pay in any portion of the amount subscribed before the operations can be commenced, although it gives the power to issue bonds at once. As this was not designed, and the precedent is a dangerous one, I return it for correction."

April 14. To the Assembly:

Returning for amendment a bill entitled "An act to amend the charter of the village of Lansingburgh, and the several acts amending the same."[27]

This act " contains a provision that the trustees of the village shall annually designate from among the justices of the peace residing in the village one police justice, and an alternate, and adds a proviso that if all such justices decline to serve, the police justice and alternate may be selected from any of the qualified electors of said village.

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[26] The Corpus Christi Ship Channel Company bill was amended, passed again, and became a law, chapter 274, on the 13th of April.

[27] The Lansingburgh bill was amended, passed again, and became a law, chapter 356, on the 15th of April.

The proviso is in direct violation of the Constitution, which provides in the 18th section of the 6th article 'that all judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the Legislature may direct.' In other words, the Constitution provides that all judicial officers of cities and villages shall be elected directly by the people, while this bill provides that in a certain contingency police justices are to be appointed by the trustees, not even from the justices of the peace elected by the people, but from the electors at large.

I cannot approve the bill in its present form; but as its passage is of great importance to the village, I suggest that this unconstitutional feature be stricken out."

April 16. To the Assembly:

Veto of a bill entitled "An act to facilitate the construction of the Albany and Susquehanna Railroad."

This bill "donates to that company two hundred thousand dollars from the public treasury, out of moneys not otherwise appropriated.

Heretofore assistance to corporations of this character has been primarily granted through the medium of loans of the State credit, accompanied by an assumed security by mortgage upon the property of the company, conditioned for the payment of the interest and ultimate redemption of the sums for which the State credit was pledged. The failure of several of the companies thus benefited to meet their obligations, and the consequent burdens thrown upon the treasury to preserve the plighted faith of the State from being tarnished, induced the framers of the Constitution to insert therein the following prohibitory clause:

'The credit of the State shall not, in any manner, be given or loaned to, or in aid of any individual, association or corporation.'[b]

[b] Const. 1846, art. 7, § 9.

The bill before me evades a conflict with this provision of the Constitution, by proposing to bestow upon the Susquehanna railroad company, a direct gratuity of two hundred thousand dollars, from the public treasury. It does not indicate from what source the money thus appropriated is to be derived, and it fails entirely to make provision for a compliance with the obligation to pay, which it imposes. Aside from these objections, it comes to me with the certificate of the presiding officers in each branch of the Legislature, that it was passed by the concurrence of a majority only of the members elected to each House. Section 9, of article 1, of the Constitution, declares:

'The assent of two thirds of the members elected to each branch of the Legislature, shall be requisite to every bill appropriating the public moneys or property, for local or private purposes.'

I am at a loss, by any process of reasoning satisfactory to my own mind, to arrive at any conclusion other than that the provisions of this bill bring it within the requirement of the Constitution here quoted. That a corporation created with a view to personal profit — whose property and franchises are owned and controlled by individuals — with which the State at large has no connection, and from whose receipts it can derive no advantage — can be considered otherwise than private, within the Constitutional sense of that term, I am at a loss to determine. It is true the section of country through which it is to pass will receive a benefit from its construction, through the facilities which it will furnish for the transportation of persons and property. But these incidental advantages to the public can no more take a railroad company from within the purview of the Constitutional provision to which I have adverted, than they would other corporations, from the operation of which similar benefits to the public are daily resulting.

It is within the power of the two Houses to obviate this palpable objection to the bill under consideration, by con-

forming their action to the requirements of the Constitution in the particular mentioned; but there are considerations of public policy which, in my judgment, militate against the provisions of the bill, at this juncture in the financial condition of the State. The embarrassments under which the treasury has labored for several years past, consequent upon the large expenditures resulting from the unfinished condition of our public works, are well known. The fact that every available source of revenue, other than direct taxation, has been inadequate to meet the exigencies thrown upon the treasury by legislative appropriations, and the demands for interest upon State indebtedness, induced me, by an imperative sense of public duty, to offer in my annual message, at the opening of the present session, the following suggestions, for the consideration of the Legislature:

'The deficiency in the General Fund, the large floating debt of the Canal Department, for the payment of which the State must provide, the necessary funds for the completion of the canals, which you are prohibited by the Constitution from borrowing, except under circumstances that at best can be made to apply but to a portion of the aggregate amount, will indicate the necessity for economy and retrenchment, as well as for refusing appropriations to new objects and purposes however meritorious. It is as much the duty and interest of governments, as of individuals, when burthened with obligations, to study and practice economy. With resources to justify our munificence, we might properly respond to the various enterprises and the numerous appeals that will claim your consideration; but when the means to promote general or individual interest can only be obtained by resort to taxation, we shall best discharge our duties by refusing to increase the public burthens. Indeed I cannot forbear to express the opinion, that until the canals are completed, and the present floating indebtedness is paid, it is just and expedient to confine

the appropriations to the simplest and most economical necessities of government.'

Nothing has transpired since the promulgation of these views, to weaken, in the least, the propriety of the policy indicated. On the contrary the Legislature, seemingly acquiescing therein, has passed a bill for the imposition of a tax of one and one-eighth of a mill, to meet the existing and prospective demands upon the treasury. This tax is less, by one-eighth of a mill, than that imposed for like objects by the last Legislature; thus furnishing presumptive evidence at least, of an intention to restrict the public expenditures for general purposes to objects of imperative necessity. The appropriations already made by the Legislature will exceed, by a considerable sum, the revenue provided; and the imposition of additional burthens upon the treasury, can only result in embarrassment to the public officers, and dishonor to the State. Every appropriation made by the Legislature is a draft drawn by the highest constituted authority upon its treasury. Deliberately to incorporate such drafts in the Statute Book, with a perfect conviction that no funds have been provided for their liquidation by any attainable means, seems to me so flagrant a departure from justice and sound policy, that I cannot believe the Legislature will, upon mature consideration, give its assent to placing the State in such a condition. Had the bill which proposes to donate two hundred thousand dollars to the Susquehanna railroad company, imposed a direct tax for that amount upon the property of the State, it would at least have been free from the objection to which I have adverted. As it is, it either holds out a delusive promise of assistance to those for whose benefit it is enacted, or else it must take the place of other appropriations, already made by the Legislature. Either alternative is subversive of that good faith and fair dealing, which should ever characterize the actions of States, not less than of individuals.

It is from no desire to exclude the section of the State to be benefited by the construction of the Susquehanna railroad from a just participation in the liberality of expenditure for public works which has been extended to other portions, that I interpose objections to the passage of this bill. But whilst, on the one hand, the obligation resting upon me compels me to insist that the requirements of the Constitution shall be observed in regard to all acts of legislation, so on the other, I am impelled by a sense of public duty freely to declare my opinion that the present is not an opportune moment to adopt new objects of expenditure, or to increase the burthens of the tax paying community. Compelled, as is the State at this time, to borrow the means for the payment of the interest upon portions of the public debt — relying upon direct taxation as the chief resource from which to meet the ordinary expenditures of the government — it seems to me that the energies of the Legislature should be directed towards devising means to meet the obligations already incurred, and save the credit of the State from dishonor, rather than to the creation of new demands upon the treasury. During the last two years the anomalous and discreditable spectacle has been witnessed, of the citizens of the State presenting demands, authorized by the Legislature, at the counter of its treasury, and retiring therefrom with dishonored claims, because of its inability to respond to the appropriations made. The result of such a course of policy cannot be otherwise than disastrous to the State credit; and a procedure that would reflect dishonor upon an individual, becomes aggravated when enacted under the sacred sanction of law.

It is in view of the fact that this bill makes no provision to meet the payment of the amount which it appropriates — that it creates a new demand upon the treasury which, without such provision, must result in dishonor to the State — that it lacks the Constitutional vote necessary to give it

vitality — and finally, because it is, in my judgment, contrary to sound policy, in view of the manifold obligations of the State, to incur new liabilities on public improvements until those already in progress shall cease, in some measure, to be a drain upon the resources of our citizens, now just emerging from a disastrous commercial revolution — that I am constrained to withhold my consent from the bill."

The bill was not passed over the veto.

April 16. To the Assembly:

Veto of a bill entitled "An act to provide for the payment of interest on the drafts and certificates of the canal commissioners in certain cases."

" The practice of allowing interest on the unpaid drafts of the Canal Commissioners, for labor and materials furnished for the enlargement and completion of the canals of this State, on drafts drawn for the payment of awards made by the Canal Appraisers, on awards made by the Canal Board or Board of Canal Commissioners, received its first legislative sanction in chapter 263 of the Laws of 1858. That act restricted the payment of interest to drafts drawn between April 1st, 1856, and July 1st, 1858, (except upon drafts drawn for final estimates for work completed prior to July, 1858,) and further provided, that ' in no case shall interest be paid on any claim under this act, for a longer period than one year.' The bill also provided other safeguards and restrictions, to which I shall have occasion to advert hereafter.

The principle of paying interest on drafts of this character being thus initiated, I did not feel myself warranted in withholding my signature from the bill passed by the present Legislature April 6, 1859, ' To provide the means for the enlargement and completion of the canals of this State,' in which is embodied a provision for the payment

of interest which has accrued and which may accrue up to the 1st of July, 1859, on drafts of the same character. In this, as in the former act, the payment of interest was confined to a single year, and restricted to drafts drawn for certain specified objects. But I find in the bill before me, a wide departure from these precedents; and other provisions which should not be adopted without the most deliberate consideration of their effects upon the interest of the State, as involved in the completion of our public works. The necessity of resorting to heavy direct taxation for the accomplishment of this end, imperatively demands from the Legislature, as well as from the executive officers, a careful scrutiny of every expenditure; to the end that a strict economy may retain and ensure the public confidence and approbation.

The bill herewith returned, imposes no limitation whatever as to the period during which interest is to be paid. It makes no discrimination as to the time at which the drafts were issued, or as to the persons in whose hands they may be found. Although issued to contractors, in view of deferred payment, and bought up by banks and capitalists at a corresponding deduction from their par value, by the terms of this act, the holder of this draft (or certificate) will be entitled to interest thereon from its date, payable annually on the first day of July, at the rate of six per cent per annum. Not only is there no reservation made in the respects mentioned, but a species of State scrip is initiated hitherto unknown in our financial history. By the act passed on the 6th of April, inst., to which I have alluded, and which imposes a tax of five-eighths of a mill for the benefit of the canals, it is provided, that:

'The Auditor of the Canal Department shall notify the Canal Commissioners respectively, when and as soon as he shall have any money on hand, subject to their drafts, and the amount thereof, and for what object or work it is applicable; and the Canal Commissioners shall make no more

drafts on said Auditor until the receipt of the notice aforesaid, or for a larger sum, or different object than that authorized by such notice from the Auditor.'

This apparent concession to the impropriety of drawing drafts upon the treasury with a full knowledge that no means existed for their payment, was wholly neutralized by the provision appended to the same section in these terms:

'But nothing in this act shall prevent the Canal Commissioners or Engineers in charge from certifying the amount due the contractor for work done and material furnished; or for any award made by the Canal Appraisers for land taken or for damages done previous to the passage of this act.'

It is the certificates thus issued by the Canal Commissioners, upon engineers' estimates and Canal Appraisers' awards, that the bill herewith returned recognizes and raises to an equivalent with the highest stock of the State — guarantees six per cent interest thereupon from date until final payment — and with no restriction upon their issues save the measure of work and damages which may have accrued prior to the passage of this bill. If any propriety existed which forbade the issuing of drafts by the Canal Commissioners, except in view of moneys actually provided and at command, it is difficult to justify the issuing of a more irresponsible form of indebtedness, with fewer guarantees against abuse; and still less reason does there exist for giving such 'certificates' the attributes and benefits pertaining to the highest forms of State obligations known to our Constitution. The act of 1858 restricted the commencement of interest on drafts for monthly estimates to the 21st day of the month succeeding — on awards made by Canal Appraisers to ninety days from the date of the award; on those by the Canal Board and the Canal Commissioners, to sixty days from the date of the award. It limited the payment of interest to the drafts drawn dur-

ing determinate periods, and for the space of a single year. It provided that the interest should be paid ' to the persons to whom such draft or award was originally payable;' and in case of his transfer at a discount, constituted the Auditor of the Canal Department as an umpire for the equitable adjustment of the interest between the parties. It is because the bill under consideration is entirely wanting in provisions of this nature — because it furnishes no safeguards against abuse, nor even against the payment of interest already discharged — because it recognizes and sanctions a new form of State indebtedness and places it upon a level with the constitutional obligations of the State — because its practical operations would, in my judgment, prove subversive of that public confidence upon which we must repose for the means of completing those great channels of intercommunication in which our State has so deep an interest, that I am constrained to withhold my consent from its incorporation into the Statute Book."

The bill was not passed over the veto.

April 16. To the Assembly:

Veto of a bill entitled "An act to amend an act entitled 'An act to incorporate the Port Byron and Conquest Turnpike Road and Bridge Company,' passed May, 1836, and an act amending the same, passed April, 1851."

" The act contains only two provisions, but both of them, are, in my opinion, objectionable.

The first section gives the company the power to remove a toll gate, but this power they already substantially possess, for the 18th section of their charter expressly gives to the county court the power to make such removal whenever its location shall do injustice to the public or the corporation.

The second section extends the charter of the company for thirty years. I have already had occasion to acquaint

your honorable body with my objections to granting special charters in cases where there are general laws providing for the same general purposes, and to express my opinion that they are unconstitutional.[1] These objections seem to me to apply with as great force to a bill extending an existing special charter as to a bill granting an original one. Upon this subject I approve this language used by Governor Fish in 1850. He says:

'The question then presents itself whether an act extending the duration of an existing corporation is in violation of the spirit of the Constitution, which prohibits the Legislature from creating by special act a corporation with similar objects to that which it is proposed to extend. Had the charter expired, there would be no doubt of the want of power in the Legislature to create by special act a corporation for the objects contemplated by the act which it is proposed by this bill to extend. And I cannot persuade myself that the fact that the charter of the company in question has not yet expired, can give the Legislature a power which it clearly would not possess had the charter expired before the attempt to exercise such power. The Legislature of 1850, has no power under the Constitution with respect to granting acts of incorporation, which may not equally be exercised by the Legislature of 1853. The charter of the Schoharie bridge company will have expired by its own limitation in the year 1852. After that date, and so long as a general law applicable to the formation of similar corporations shall remain in force, there can be no pretence of a power in the Legislature to pass a special act giving an existence for twenty-eight years to the company for whose benefit the bill is designed. In my opinion the Legislature cannot merely by anticipation exercise prohibited power. I do not doubt that the Legislature may constitutionally alter or amend by a special law an existing charter granted prior to the adoption of the present Con-

[1] Const. 1846, art. 8, § 1.

stitution, and in a case in which a corporation could not now be created, except under a general law, so as to enable the corporation the better to accomplish the objects of its creation, and with this view may modify its corporate powers. There may also be cases in which, in order to protect existing rights, an extension of the charter is proper.'

Entertaining such views, I am obliged to return the bill for reconsideration, simply adding, in the language of Gov. Hunt, that if the corporation decide 'to continue the exercise of their corporate privileges for an additional term of years, it appears to me that they should comply with the general law which has made ample and convenient provision for such cases.'"

[See next special message.]

April 18. To the Assembly:

"ALBANY, *April* 18, 1859.

"Since the transmission to your honorable body of the message stating my objections to the bill relating to the Port Byron and Conquest plankroad company, my attention has been called to the fact that the Seneca river, which this road crosses by a long bridge, has been declared a public highway. Had I known this fact I should have given to the bill my approval; for I take it to be clear, that a company organized under the general plankroad act cannot originally erect a bridge across navigable waters, and that there is a doubt whether a company so organized can rebuild and maintain such an existing bridge after the expiration of the special act which authorized its erection.

In view of this doubt, and of the inconvenience which would result to the public if the bridge were permanently removed, I request that your body will, if consistent with your rules, return the message and the bill to me, that I may give to the latter my approval.

E. D. MORGAN."

This bill was approved April 19, and became chapter 482.

April 19. To the Senate:

Veto of a bill entitled "An act in relation to the duties of the assistant clerks of the New York Police Courts."

The bill "imposes upon them no new duties, but raises their compensation about four thousand dollars in the aggregate. The present salaries were fixed only a year since by the supervisors of the county, and the same body possesses full power to increase them. Without the sanction or intervention of these local authorities an attempt is now made to increase the salaries and to place them beyond the control of the supervisors.

In signing my name to this bill I should be called upon to give my approval to that which I believe to be radically wrong in principle. Where the local authorities possess all necessary powers and there is no complaint of any unjust refusal to act, and no public grievance is shown to exist, I cannot sanction with my signature any attempt to overrule or interfere with the powers of the local authorities."

The bill was not passed over the veto.

April 19. To the Assembly:

Veto of a bill entitled "An act for the relief of the personal representatives of Chapman Church, deceased."

"I am quite unable to see the justice of the claim sanctioned by the bill, and I feel sure that the facts could not have been properly understood by your honorable body.

As I understand the case presented by the petitioners, the Comptroller, in 1853, sold a certain parcel of land for unpaid taxes, and it was purchased by one Goodyear, who assigned his certificate to one Kidder. In 1855 the land was properly redeemed, but through some mistake, the proper entry was not made in the Comptroller's office, and a deed was subsequently irregularly given to Kidder. He

sold to Chapman Church, (whose heirs now seek relief,) for the sum of one hundred and twenty-five dollars. The land having been properly redeemed, neither Kidder nor Church got any title to it. Under these circumstances the heirs of Church ask the State to repay to them the one hundred and twenty-five dollars paid by him to Kidder, with interest, although the amount the State received from Kidder was less than five dollars. If the claim should be sanctioned, it would, I fear, prove the entering wedge which would lead to large drafts upon the treasury, and introduce great abuses. The person who buys a tax title knows that he buys a doubtful title, and with that knowledge ordinarily pays much less than the value of the land. If his title fails, the utmost he can claim from the State is the amount the State received, and if he has paid more than that, he should look to his vendor.

I therefore return the bill for reconsideration."

The bill was not passed over the veto.

April 19. To the Assembly:

Veto of a bill entitled "An act to authorize the First Congregational Church and Society of Cambria, Niagara County, to sell and convey their parsonage property."

The act "gives the power to do what can be accomplished under an existing law, which has been many years upon the Statute Book, and which has only recently been declared ample by the Court of Appeals.* The law is to be found on page 610 of the second volume of the fifth edition of the Revised Statutes, and gives the Supreme Court power to order the sale of any property belonging to religious corporations, and to direct the application of the proceeds to proper purposes.

I therefore return the bill without my signature."

The bill was not passed over the veto.

April 19. The Legislature adjourned without day.

* See Wheaton v. Gates (1858), 18 N. Y. 395.

EDWIN D. MORGAN, Governor.

ANNUAL MESSAGE.

To the Senate and Assembly.— It is especially incumbent upon all who are engaged in public affairs to acknowledge their dependence upon the author of all good, and to supplicate His favor and blessing. Let us, therefore, in proceeding to the discharge of the highly responsible trusts which have been committed to us, invoke His divine aid that He will crown with success all the efforts that shall be made in any department of the government for the material, intellectual, and religious improvement of the people.

Conforming my action to a requirement of our written Constitution, I now proceed to communicate to the Legislature the condition of the State, and to recommend the adoption of such measures as I deem expedient.

The funded debt of the State now amounts to	$33,313,338.85
Of which	6,505,654.37
is the General Fund Debt, and	26,807,684.48
is the canal debt.	

The Canal Debt, paying interest, is as follows:

1. The debt referred to in article seven, section one of the Constitution, being the debt in existence at the adoption of that instrument and to the payment of the principal and interest of which the surplus revenues of the canals to the amount of $1,700,000 annually are devoted	$11,665,098.99

2. The debt contracted in 1854, in pursuance of the amendment to article seven, section three of the Constitution.....	$12,000,000.00
3. The debt contracted at sundry periods since 1849, to meet casual deficits, in pursuance of article seven, section ten of the Constitution	642,585.49
4. The new loan, contracted in pursuance of the vote of the people at the election in November last, to pay the floating debt..	2,500,000.00

This loan of two millions five hundred thousand dollars has been or will be, applied to the payment:

Of Canal Commissioners' drafts	$2,041,831.29
Canal Commissioners' certificates issued prior to September 30, 1859.....	170,788.60
Awards made by Canal Appraisers prior to January 1, 1859, for which drafts and certificates had not been given on September 30, 1859	59,595.57
Balance of fifteen per cent, retained after deducting amount for which drafts and certificates have been given	311,004.64
	$2,583,220.10

The premium obtained on the loan, which is an average of 5.18 per cent for a six per cent stock, and which amounts, in the aggregate, to one hundred and twenty-nine thousand seven hundred and thirty-four dollars and fifty cents, will be sufficient, if so applied, to pay the excess of indebtedness over the two million five hundred thousand dollars, and thus to extinguish entirely the floating indebtedness of the State.

The popular vote by which this new loan was authorized is such as to show that while the people of New York have ever been prompt to meet all just obligations, they will not

be likely again to sanction the payment of any debt not authorized by the Constitution and the laws, no matter for what purpose, or under what circumstances incurred. The act of April 6, 1859, which prohibits the creation of any similar obligations in future, doubtless contributed much to induce the people to authorize the payment of those which existed. The provisions of that law might, in my opinion, properly be extended so as to affix a penalty to the creation of any such indebtedness in future. This would effectually carry out the constitutional prohibition,[a] and prevent the people of the State from ever again being placed in the dilemma of paying an unauthorized debt or seemingly incurring the stain of repudiation.

The interest on the Canal Commissioners' drafts has been paid to the first of July, 1859. Provision should be made for that which accrued from that date to the 26th of December, the day named by the Auditor for the payment of the principal.

The whole amount of receipts from tolls, rent of surplus waters and interest on current canal revenues during the year ending September 30, 1859, was one million eight hundred and fifty-nine thousand eight hundred and seventy-nine dollars and sixty-three cents, against two million, seventy-two thousand, two hundred and two dollars and eighty-eight cents, the previous year. The expenses were eight hundred and ninety-seven thousand eight hundred and seventy-eight dollars and ninety-six cents, against one million seventy-eight thousand eight hundred and seventy-eight dollars and ninety-one cents the previous year.

Receipts from tolls:

Erie canal	$1,549,205.86	
Champlain canal	103,654.79	
		$1,652,860.65
Oswego canal		69,348.37
Cayuga and Seneca canal		17,449.54

[a] Const. 1846, art. 7, § 12.

Chemung canal		$16,868.66
Crooked Lake canal		715.06
Chenango canal		17,801.72
Black River canal		5,963.02
Genesee Valley canal		28,163.93
Oneida Lake canal		701.41
Baldwinsville canal		26.03
Oneida River improvement		2,044.64
Seneca River towing path		163.82
Cayuga inlet		173.95
		$1,812,280.80
From rent of surplus waters		2,081.67
From interest on current canal revenues		45,517.16
		$1,859,879.63
The payments were:		
To superintendents, for repairs	$465,911.92	
To contractors, for repairs	163,668.59	
To Canal Commissioners, for repairs, &c.	155,265.79	
To collectors, for salaries, clerk hire, pay of assistant collectors, and expenses of collectors' offices	63,287.00	
To weighmasters	6,295.93	
For salary of Auditor and clerk hire in Canal Department, salary and extra clerk hire of State Engineer, refunding tolls, printing and miscellaneous payments	43,449.73	
		$897,878.96
Surplus revenues		962,000.67

By decreasing the expenses of operating them, and by some advance in the rate of tolls, the canals can be rendered much more productive.

The cost of superintendence and repairs, for the last five years has been as follows:

1855	$887,934.46
1856	669,406.16
1857	817,906.26
1858	946,805.18
1859	784,846.30
	$4,106,898.36
Average for five years	$821,379.67

On the 1st of April, 1859, the Contracting Board put under contract for repairs all those portions of the canals which were not so already. They were let at a sum which makes the aggregate cost for repairs amount to two hundred and fifty-two thousand two hundred and ninety-two dollars a year, and twenty thousand dollars for superintendence. This, it will be seen, is a very great decrease, compared with the expenses of the five preceding years. There is, however, reason to believe that several of the sections have been let for a less sum than they should have been, to enable the contractors to do perfect justice to the State without loss to themselves. After the canals are completed, I think there is no doubt that the repairs, which include lock-tending, may all be done for five hundred thousand dollars a year, and the water-ways and structures be maintained in as good condition, in every respect, as when the contracts are made.

In 1851 the canal tonnage was	3,582,733	Tolls	$3,703,999
In 1852 the canal tonnage was	3,863,441	Tolls	3,174,857
Gain	280,708	Loss	$529,142

The tolls were reduced in the winter of 1852 to meet the railway competition anticipated from the release of the tolls on railroads by the act of 1851. The tonnage carried in 1852 would, upon the rates of toll as they were in 1851, have given a revenue of four million dollars. The canal tonnage has never been less than that of 1851, except in 1857, when it was three million three hundred and forty-four thousand, sixty-one dollars, or two hundred and thirty-eight thousand, six hundred and seventy dollars less. In 1853 the tonnage was four million two hundred and forty-seven thousand eight hundred and fifty-three, and the tolls were three million one hundred and sixty-two thousand one hundred and ninety dollars on the reduced rates of 1852. At the rates of 1851, the tolls on the tonnage would have been four millions five hundred and two thousand seven hundred and sixteen dollars.

In 1857, the tonnage was.....	3,344,061	
and the tolls were		$2,531,804.00
In 1858, the tonnage was.....	3,665,192	
and the tolls were		2,047,391.00
Gain	321,131	
Loss		484,413.00

The tolls were reduced in the winter of 1858, thirty-three and one-third per cent, on agricultural products, and fifty per cent on merchandise. In 1859 there was a further reduction of fifty per cent on merchandise and non-enumerated articles, and thirty-three and one-third per cent on most agricultural products. The tonnage for the year 1859 has not yet been ascertained. It will probably be equal to that of 1857. The tolls for the fiscal year of 1859 were one million, eight hundred and twelve thousand, two hundred and eighty dollars and eighty cents. The canal

tonnage of 1858, at the rate of toll as fixed in 1857 would have given a revenue of two million, seven hundred and fifty-two thousand, nine hundred and twenty-five dollars. So that it is seen the State has lost over one million dollars in the reduction of tolls in 1858 and 1859.

The theory advanced by those who favor the reduction is, that transit on the canals must be cheapened to retain the traffic and protect the treasury against railroad competition within the State. This may be true, to a limited extent, and to that extent the State has complete power to apply an effectual remedy. The spirit of the Constitution, undoubtedly requires that such rates of toll shall be imposed as will yield the largest amount of revenue. In 1858, the "surplus revenues" of the canals were one million, seven hundred and sixty-six thousand, six hundred and seventy-four dollars less than the annual constitutional charges upon them, and in 1859, the deficiency will reach one million, nine hundred and eighty thousand, one hundred and fifty dollars, making three million, seven hundred and forty-six thousand, eight hundred and twenty-four dollars, which has been or must be supplied by loans and taxes. The railroad competition is directed mainly to the through traffic. Of the freight carried on the canals, there is only one ton of through to two tons of way freight, and when the tolls are reduced on one million of tons of competing freight, the same reduction is made on two millions of tons of non-competing freight, showing clearly that the treasury does not thereby receive the largest amount of revenue. Is not the conclusion unavoidable, that competition has induced a much greater reduction of tolls than was necessary to retain the business of the lake countries to our avenues of transit and our commercial metropolis? I am of the opinion, that the reductions of the year 1858 and 1859 were inexpedient, and that the rates on most articles, should be raised nearly to those which existed prior to such reductions.

Nothing, however, will so effectually increase the revenues of the canals as their entire speedy completion, for which it is estimated there is needed the sum of....	$1,280,540 37
exclusive of land damages, which are also estimated at	700,000 00
Making the total sum necessary.....	$1,980,540 37

Of which three hundred and twenty-one thousand, five hundred and seventy-one dollars is already applicable to the purpose, leaving a balance to be provided of one million, six hundred and fifty-eight thousand, nine hundred and sixty-nine dollars, and thirty-seven cents.

It cannot be denied that there have been mistakes in the past, arising in part from erroneous estimates, in consequence of which a larger debt than was necessary has been created for the enlargement of the canals, and their completion has been unduly postponed. The result has been to impose a heavy burden upon the people without their having thus far derived all the benefit which they anticipated. These mistakes are, however, matters of the past, important to us only from the responsibilities and duties they imposed upon us.

The canals are to remain the property of the State. Their sale, inexpedient at any time, even if permitted by the Constitution,[b] would be doubly so at a period when, by unwise legislation and uncontrolled competition their revenues have been reduced to the lowest point and when their completion, now so soon to be realized, will enable us to reap the fruits of the sacrifices and expenditures hitherto made. It is both practicable and advisable to entirely complete them before the opening of navigation in 1861, and to obtain on the Erie and Oswego canals the full waterway of seven feet in depth by seventy in width

[b] Const. 1846, art. 7, § 6.

before the opening of navigation the present year. I strongly urge that this be done, even if it should be necessary to delay the opening for the passage of boats a few days longer than ordinary.

The amount of interest on the debt which the Legislature has annually to provide, is as follows:

On the new Canal Debt of $12,000,000, contracted in 1854	$710,000.00
On the General Fund Debt, chargeable to the Sinking Fund	354,606.10
On the several loans contracted to meet casual deficits for canal purposes	34,629.28
On School and Gospel Fund for Stockbridge Indians	2,160.00
	$1,101,395.38

The interest on the old Canal Debt is provided for by the surplus revenues of the canals, but, under the Constitution, what remains of those revenues, after paying such interest, goes to the Sinking Fund for the redemption of the principal.[c] The law under which the recent loan of two millions five hundred thousand dollars was made, provides for the levying of a tax sufficient to pay the interest and the contribution to the Sinking Fund to redeem the principal.

There is needed:

For the completion of the canals	$1,658,969.37
For the payment of interest on the debt not otherwise provided for	1,101,395.38
For the expenses of government beyond estimated permanent revenue	1,200,000.00
Total	$3,960,364.75

[c] Const. 1846, art. 7, § 1.

Of the amount needed to complete the canals, however, not more than one-half can be advantageously expended during the year. Deducting, therefore, eight hundred and twenty-nine thousand four hundred and eighty-four dollars and sixty-eight cents from the above aggregate, we have three million, one hundred and thirty thousand, eight hundred and eighty dollars, and seven cents, as the amount to be raised to meet the current expenses of the year, to which must be added such extraordinary appropriations, if any, as are made by the present Legislature. The General Fund account was deficient about fifteen thousand dollars at the end of the last fiscal year.

It will also become your duty to provide for the repayment of advances by the Manhattan Company for interest on the stock issued in 1854, and for other amounts becoming due thereon, unless the Commissioners of the Canal Fund shall make a loan for the purpose. The whole amount required will be seven hundred and ten thousand dollars.[1]

The system of economy and retrenchment, which was vigorously entered upon by the Legislature of 1859, should be continued, and the expenses of every branch of the government reduced to the lowest point consistent with efficiency. While judicious appropriations should be made for the charities which usually depend in a measure upon the assistance of the State, and which are not in a condition to dispense with it at present, new objects of expenditure, however proper and deserving, should be delayed till our canals are completed, taxation for the payment of interest ceases to be necessary, our various sinking funds are brought into a healthy condition, and the General Fund is made to present a working balance instead of a continued deficiency. But especial care should be taken to incur no expense and make no appropriations without providing the

[1] The canal legislation at this session embraced acts which provided for continuing the enlargement and completion of the canals, interest on the canal debt, administration, and for several local canal improvements.

money to pay them. The propriety of such a system must be manifest to all. New York possesses resources and revenues independently of taxation, which are adequate to the payment of the interest and principal of all her existing debts, if not to the support of her government, and it only requires a just and faithful administration of her affairs to secure that result.

Prior to the year 1844, there were great differences in the position of the railroads with reference to the transportation of merchandise. While some of them were allowed to carry it during the entire year without limitation, others were permitted to do so only when the canals were closed and on payment of tolls, while one, at least, was absolutely forbidden to carry freight at all. In 1844, however, an approach to a more uniform system was made by giving to all roads that did not previously possess it the right to transport freight during the suspension of canal navigation, and by requiring all the railroads along the line of the Erie and Oswego canals to pay the same rates per mile on freight transported over them as it would have paid if carried on the canals. In 1847 all railroads along the central line were permitted to carry freight the entire year, and required to pay tolls. In 1850 the same provisions were, by the general railroad act, made applicable to all railroads running parallel to and within thirty miles of any canal. In 1851 all tolls were abolished upon freight carried over railroads, under the expectation that the revenues from the enlarged canals would prove adequate to the payment of the interest upon the canal debt.

During the time that tolls were imposed upon the railroads the amount received from them by the State steadily increased from ten thousand, four hundred and fifty-eight dollars and forty-four cents, in 1845, to one hundred and sixty-three thousand, two hundred and thirty-seven dollars and twenty cents, in 1851. On the through freight carried the whole length of the line of the Central railroad in 1857,

the tolls, at the two mill rates, would have been four hundred and twelve thousand, nine hundred and fifty-six dollars and fifty-seven cents, and in 1858, four hundred and forty thousand, four hundred and ninety-five dollars and twenty-eight cents. On the through freights, carried over the New York and Erie railroad in 1857, the tolls at the same rate would have been about three hundred and fifty thousand dollars.

Since 1851 the tolls received from the canals have steadily decreased from three millions, seven hundred and three thousand, nine hundred and ninety-nine dollars and thirty-one cents, the amount in 1851, to one million, eight hundred and twelve thousand two hundred and eighty dollars and eighty cents, the amount in 1859, though the tonnage has remained about the same, having been three million, five hundred and eighty-two thousand, seven hundred and thirty-three tons in 1851, and three million, six hundred and sixty-five thousand, one hundred and ninety-two in 1859. The loss in tolls has been caused by the diversion from the canals to the railroads of a large portion of those classes of freight, which formerly paid high tolls and which the heavy reductions in canal tolls failed to retain, while the tonnage of the canals has been maintained by the increase in those classes of heavy freight which the railroads cannot profitably transport. Examination shows that the tonnage of the railroads is largely in excess on all classes of freight, except the products of the forest and vegetable food, and that even in the latter class the railroads are gaining rapidly.

If, therefore, the constantly increasing amount of freight carried over the railroads has occasioned a corresponding diminution of our canal revenues until the interest on the canal debt formerly paid from these revenues, has now to be drawn by direct taxation from the people, is there not an imperative necessity for protective legislation? I cannot doubt either the wisdom or the justice of re-impos-

ing, for a few years, a moderate toll per ton, during the season of navigation, upon all freight passing over railroads competing with the canals, or of requiring these roads to pay an aggregate equivalent in money, annually, into the treasury. When the canals shall have been completed, the railroads should be relieved from a burden temporarily imposed, so that commerce may have the advantage of the quickest and cheapest means of transit for merchandise and produce to and from the vast and bountiful west.[2]

The number of convicts in the prisons of the State on the 1st days of October in the years 1859 and 1858, with the number of cells in each prison, was as follows:

	1859.	1858.	Cells.
Sing Sing, males	1,092	968	991
Sing Sing, females	136	104	81
Auburn, males	811	696	770
Clinton, males	447	358	390
Total	2,486	2,126	2,232

The average number of convicts per day in each prison during the past year, has been, at Sing Sing, males, one thousand and fifty-five; females, one hundred and twenty-three; Auburn, seven hundred and eighty-seven; Clinton, about four hundred and three. The average number of re-commitments at Sing Sing, for seven years past, has been twelve per cent of males, and five and a half per cent of females; indicating that our prisons are to a greater extent reformatory institutions than has been supposed.

[2] See special message of February 28, urging the re-imposition of railroad tolls. The Assembly passed a bill repealing the act of 1851, which abolished railroad tolls, but the bill failed in the Senate, where the prevailing opinion seemed to favor the second branch of Governor Morgan's suggestion which involved the payment of a gross annual sum by the railroad companies in lieu of tolls.

The expenses for the year ending September 30, 1859, were:

Sing Sing, males	$119,416.07
Sing Sing, females	9,023.87
Total	$128,439.94
Auburn	79,875.07
Clinton	71,018.67
Total expenses	$279,333.68

Of this sum there was expended for buildings and repairs, nine thousand seven hundred and ninety-nine dollars and sixty-seven cents at Sing Sing; seven thousand two hundred and thirty-seven dollars and forty-six cents at Auburn, and three thousand nine hundred and fifty-six dollars and thirty-six cents at Clinton.

The earnings during the same period were:

Sing Sing	$96,649.13
Auburn	72,683.33
Clinton	21,579.06
	$190,911.52

Making an excess of expenditures over earnings at

Sing Sing	$31,790.81
Auburn	7,191.74
Clinton	49,439.61
Or in all	$88,422.16

against $234,290.01 in 1858.

The average cost of maintenance of each convict per month, including everything but building and repairs, is, at Sing Sing, eight dollars and thirty-one cents; Auburn,

seven dollars and sixty-eight cents; Clinton, thirteen dollars and eighty-six cents. It affords me gratification to say that there is a marked improvement in the management of the prisons, the effects of which will be even more obviously seen during the fiscal year commencing October 1, 1859. Indeed, there is reason to believe that the time is not distant when the prisons will, as they should, cease to be a drain upon the treasury. The salaries of the Agent and Wardens is wholly disproportioned to the services rendered by them, and the responsibility imposed upon them, and I recommend that it be increased.

Sing Sing is the only prison where females are received, and the average expense of that prison is therefore necessarily increased. It is worthy of your consideration whether it would not be proper so to change the law as to provide that females convicted of crimes involving imprisonment for brief periods should be sent to the penitentiaries instead of the State Prison. Whether this is or is not done, there is an obvious propriety in providing for keeping the expenses and receipts of the female prison by themselves.

The disproportionate cost of maintaining the prison at Dannemora, in Clinton county, shows that its original design and location there was an error. It was constructed under the expectation that convict labor could be profitably employed in the mining of ore and the manufacture of iron; and this has been almost the only branch of manufacture pursued there. Experience has shown that it is impossible to excite sufficient competition among contractors in this business to procure a just price for convict labor, and that the labor itself is of necessity hard, repulsive, and uninstructive to the convict, and not remunerative to the State. The only possible remedies are to remove or abandon the prison, or to introduce more productive branches of manufacture. Deeming the former course entirely inexpedient, the commissioners appointed under the

act of April 18, 1859, to provide additional accommodations for convicts (consisting of the Governor, Lieutenant-Governor and Comptroller), unanimously decided, after mature consideration and a careful examination of the several prisons, to enlarge Clinton prison by the extension of the present building, so as to give one hundred and fifty-six new cells. This enlargement is now nearly completed and will cost about thirteen thousand dollars. It enables the State to introduce other branches of business, while continuing during the existence of the present contracts, the manufacture of iron. Contracts have already been made for the employment in other branches of manufacture of all the convicts that the State can furnish at that prison. It was hoped that it would be unnecessary to provide further prison accommodations at present, but the constantly increasing number of convicts now renders it necessary that one or both of the other prisons should be enlarged, or a new prison constructed within a short time.

Under the act of April 18, 1859, about fifty acres of the farm connected with the prison at Sing Sing have been sold for the sum of thirty-four thousand two hundred and thirty-three dollars and eleven cents, which sum has been paid into the treasury; but by the law authorizing the sale it can be used only for buildings and improvements at that prison. That portion of the farm through which the Croton aqueduct passes, was, by request of the Aqueduct Board, withheld from sale that some arrangement might be made in reference to it.[3]

The Asylum for Insane Convicts at Auburn is now substantially completed and in full operation. Fifty-nine patients have been received during the year, and six dis-

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3 Chapter 283, passed April 12, directed separate reports from the male and female departments of the State prisons.

Chapter 399, passed April 14, contained numerous amendments to the prison laws relative to administration and convict labor. Chapter 464, passed April 16, appropriated $20,000 for enlarging the Auburn prison, $2,500 for completing the buildings at Clinton prison, and $4,000 for the shoe shop.

charged. The expenses for the year ending October 31st, 1859, were seventeen thousand eight hundred and fifty-nine dollars and eighty-five cents, of which five thousand three hundred and ninety-four dollars and forty-one cents were for buildings, repairs and miscellaneous items not likely to occur again. The asylum has room for sixty-four inmates. The establishment of a separate institution for insane convicts is to a certain extent an experiment, but there is reason to believe it will prove successful. The excellence and completeness of the accommodations make the support of its inmates a source of considerably increased expense.

The commissioners named in the act of April 18, 1859, to settle the account of Jacob D. Kingsland against the Clinton prison, met to enter upon the duties assigned them, supposing that the claim was of a nature and amount to be readily adjusted. They, as well as the agent and warden of the prison, were surprised to find that a claim was presented for one hundred and three thousand eight hundred dollars, which involved matters of evidence and detail that could not be properly examined in the brief period then allowed by law. Under these circumstances the agent and warden, acting under the advice of the Attorney General, very properly revoked the submission entered into for the settlement of the claims. After this one of the commissioners declined to meet with his colleagues. As the law expressly required that all the commissioners should meet, there was no power in the remaining two to act. The two, however, awarded that the State should pay Mr. Kingsland fifty-nine thousand, two hundred and thirty-nine dollars and sixty-one cents. I believe the award is both excessive and invalid, and that the whole matter should be again passed upon by the Legislature.[4]

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[4] The Legislature responded to the Governor's suggestion in the Kingsland matter by enacting chapter 260, on the 11th of April, which authorized the Governor to appoint three commissioners to settle Mr. Kingsland's claims.

The commissioners appointed by the Governor in pursuance of the act of April 16, 1859, referring the claim of Eli Chittenden and others, known as the Averill ore bed claim, have also met and acted upon the matter submitted to them. They decided that a purchase of property claimed to have been made by the State in April, 1856, for one hundred thousand dollars, was invalid, and awarded that the State pay to the claimants thirty-five thousand dollars. The claim presented was for the purchase money with interest, or for damages, amounting to one hundred and sixty-five thousand dollars, while the State admitted a considerable indebtedness. The award is by its terms binding and final upon all parties, it is believed to be just to the claimants, and advantageous to the State, as it extinguishes a large claim and terminates a long protracted controversy.

Most of the expense of administering justice in criminal cases is now borne by the counties within which the crime is committed and the conviction had, but the expense of transporting convicts to the State Prisons, of bringing back criminals from other States on requisitions, and of employing counsel to assist the district attorneys in the trial of criminals, has remained a charge upon the treasury of the State. The transportation of convicts costs the State annually about twenty-five thousand dollars. A large portion of the criminals are convicted at a few centers of population and trade, while the expense of transporting them is charged equally upon the people of the entire State. It would be difficult to assign any good reason why each county should not pay the expense of transporting its own convicts, as well as the cost of arresting and detaining them before trial. If this expense was made to fall upon the counties, there can be no doubt that it would both diminish the aggregate cost and reform existing abuses. The practice I have adopted of ordinarily granting requisitions

only at the expense of the county or the complainant, has much lessened the cost of reclaiming fugitives from justice. Some amendment of the law is needed, though the counties have usually been willing to assume the expense.

Applications have been made to me from time to time to require the attendance of the Attorney General at criminal trials, which I have felt compelled to refuse. The duties of that officer do not usually permit him to attend in person, and he must employ some one in his place. Considerable expense is thus imposed upon the State which properly belongs to the counties. The power to require the attendance of the Attorney General on important occasions should remain, but it should be placed under stricter limitations than at present, and be accompanied by the right to impose the expense upon the county. It is worthy of consideration whether the power which the Attorney General possesses of employing counsel at the expense of the State, does not require some limitation.

The examination of the very numerous applications for pardon is one of the most onerous and embarrassing duties of the executive. Entertaining a profound sense of the responsibility imposed upon me, I have endeavored to discharge this duty understandingly and faithfully, and have taken more than usual pains to ascertain the merits of each application, but I have granted pardons in the cases of two or three convicts, in which subsequent information has satisfied me that the ends of justice would have been better answered by their continuance in prison. In no case has a pardon been granted without previously communicating with the district attorney of the county in which the conviction was had, and obtaining a full knowledge of the evidence given on the trial as well as his views of the case, though the necessity of awaiting the replies often entails great delay. I have, during the past summer, visited all the State prisons, and spent two or three days at each in

personally examining convicts who had previously applied for pardon, amounting to one hundred and sixty-nine. To each one about fifteen minutes were devoted, which was found sufficient to enable the prisoner to tell his own story and to answer any questions I thought proper to put to him. A record of the statements made, and facts elicited in each case, was placed on file in the Executive Department. Besides those who had previously applied for pardon, I examined at the prisons in the same way two hundred and three convicts, who from want of friends or the proper opportunity had not previously sought clemency, paying particular attention to those whose length of sentence and good conduct in prison commended them to notice. The total number examined at the prisons was three hundred and seventy-two. On entering upon the duties of my office, I found three hundred and ten applications for pardon awaiting decision. There have since been received four hundred and seventy-seven. Five hundred and thirty-nine cases have been decided including all but fourteen of the cases found there on January first. I have granted eighty-four pardons and eight commutations, besides four reprieves. I have refused pardons in four hundred and forty-two cases, and the sentences of one hundred and thirty expired before any decision was made; while eight died, escaped or were discharged by legal process. Of the pardons granted forty-four were cases of new applications; thirty-nine were cases found on file on January first. I examined the prisoners personally in the cases of fifty-two of the pardons granted, being nearly all those granted to convicts in State Prison. The convicts in two hundred and thirty-seven of the cases where pardon was denied, were also personally examined. There now remain undecided one hundred and eighteen applications, awaiting the replies of the district attorneys which are in some cases unwarrantably delayed. The larger portion of these are cases where the conviction took place in the city

of New York. One person has been executed during the past year, and the punishment of two has been commuted from death to imprisonment for life, solely on the ground of insanity. Five persons are now under sentence of death. In seven cases a restoration to the rights of citizenship has been granted. The report required by the Constitution[d] will be submitted to you, and to that I refer you for further information.

In examining applications for pardon, I have been much embarrassed from inability to procure the requisite information. I have the power to call upon district attorneys for a statement of the facts proved on the trial, but in many cases the officer who procured the conviction is out of office, has left the State, or is dead, and no minutes of the testimony have been preserved. Prosecuting officers should be required to file, in the county clerk's office, the minutes of evidence taken by them.[5]

The experience acquired in performing this portion of my duties, has given me abundant evidence that our criminal law greatly needs amendment. As concerns the length of the sentences, and the place of punishment, far more discretion should be given to the judges. The county prisons and penitentiaries should, in many cases, be selected, rather than the State prisons. The punishments the law imposes upon technical offences, are often far beyond that which the actual crime merits, and as a general thing the terms should be shortened, and more reliance be placed upon the certainty than the duration of punishment.

In capital cases, applications for pardon or commutation are sometimes based upon the alleged insanity of the con-

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[d] Const. 1846, art. 4, § 5.

[5] By chapter 135, passed March 31, district attorneys were required to file minutes of testimony in the county clerk's office within thirty days after the termination of the court at which any criminal is tried. The county clerk was required to transmit such testimony to the Governor on his application.

vict, and it is then desirable that some disinterested person, skilled in detecting the various forms of that disease, should be commissioned to visit the prison and make a careful examination of the mental condition of the criminal. For this and other purposes connected with the exercise of the pardoning power, a small annual appropriation should be made.[6]

The report of the Superintendent of the Banking Department, which will soon be presented to you, will exhibit in detail the operation of our banking system during the past year. It appears that during the fiscal year three associations and three individual bankers have commenced, and one individual banker has discontinued the business of banking. The total amount of securities held in trust for banking associations and individual bankers on the thirtieth day of September, 1859, was twenty-eight million, sixty-eight thousand, three hundred and thirty-six dollars and ninety-two cents:

Consisting of bonds and mortgages.....	$6,176,912.79
New York State stocks.....	19,262,035.93
United States stocks	1,864,100.00
Other State stocks	686,733.34
Cash on deposit	78,554.86

[6] The appropriation act, chapter 464, allowed $300 to the Governor for use in the exercise of the pardoning power.

Chapter 410, passed April 14, limited the death penalty to cases of treason and murder, and divided the crime of murder into two degrees. The act also regulated the punishments for murder.

In Hartung v. People, 22 N. Y. 95 (1860) the act was held void as to persons convicted before its passage. The rule as to punishments existing at the time of conviction could not be changed. See also Shepherd v. People (1862), 25 N. Y. 406.

The act was also held unconstitutional in Kuckler v. People (1862), 5 Park. Crim. Rep. 212. It was amended in 1861, chap. 303. Both acts were considered and held unconstitutional in Hartung v. People (1863), 26 N. Y. 167.

See 1861, note 3, *post*, p. 265; also L. 1862, chap. 197.

On the faith of these securities there has been issued a circulation of	$26,490,632.00
The amount of circulation issued to banks doing business under special charter is	10,090,644.00
Total circulation	$36,581,276.00

The total amount of banking capital employed is one hundred and ten million, nine hundred and ninety-seven thousand and forty dollars, being an increase of one million and four hundred and ninety dollars during the year.

The school system of the State continues under the direction of the present Superintendent of Public Instruction, to increase in value and efficiency.

The expenditures of the year ending September 30, 1859, were:

For teachers' wages	$2,443,184.80
For libraries and school apparatus	156,326.37
For colored schools	24,364.00
For school houses, sites and repairs	724,292.47
For incidental expenses	316,449.93
Total	$3,664,617.57

The amount so expended was raised as follows:

Balance unexpended from the previous year	$422,921.54
From Common School Fund and State tax.	1,322,683.33
From gospel and school lands	19,384.64
From school district tax	1,921,464.05
From school district rate bills	414,062.72
From all other sources	56,227.80
Amount remaining unexpended	492,126.51

Number of school districts in the State..	11,621
Number of school houses	11,576
Number of children between 4 and 21....	1,262,486
Number of children attending the public schools	851,533
Number of teachers employed within the year	26,411

The whole number of pupils in attendance at the Normal school during the past year has been three hundred and twelve, of which sixty-three have graduated. The whole number of pupils who have been in the school since its establishment, is three thousand two hundred and eighty-eight. The number now in attendance is two hundred and fifty-three.

The academies constitute an important part of the educational system of the State. They are established by private contributions for buildings, apparatus and libraries, which, at the date of the last report, amounted to two millions two hundred and twenty-two thousand two hundred and seven dollars. They receive from the Literature and United States Deposit Funds forty thousand dollars annually.

The militia of the State, it is estimated, comprises in the aggregate four hundred and eighteen thousand eight hundred men. The organized portion of this force consists of eighteen thousand eight hundred officers, non-commissioned officers, musicians and privates, and is divided into eight divisions, twenty-six brigades and sixty-four regiments. The force, which is constantly improving in discipline and effectiveness, constitutes a body of citizen soldiery to which the people of New York may point with a just pride, and upon which they may rely with confidence that it will prove equal to any emergency in the future as it has done in the past.

Under the laws of 1857 and 1859, providing for the erec-

tion of arsenals and armories, arsenals have been erected, and are now completed, at New York, Brooklyn, Corning, Albany and Buffalo; and armories have been erected or purchased at Dunkirk, Syracuse, Auburn, Ballston Spa, Schoharie, and Ogdensburgh, though some of them are not yet finished. Lots and buildings have also been purchased for armories at Kingston and Rochester. The referee appointed in the act of April 13, 1859, to inquire into the cause of the fall of the New York arsenal and to ascertain the amount, if any, due from the State to the contractor, has awarded that the State pay to him fourteen thousand two hundred and sixty-five dollars and seven cents. The act permits either party to appeal from the award.

The commissioners named in the act of April 8, 1859, to examine and adjust the claims for the services of the militia in the war of eighteen hundred and twelve, have found their labors more arduous than was expected. There have been presented to them fifteen thousand one hundred and twenty-seven claims, nearly all of which have been passed upon. The amount involved, and for which a claim is to be presented to the general government, is about eight hundred thousand dollars.

The State assessors, appointed under the act of April 14, 1859, have obtained much information, acting upon which, the board of equalization, constituted by that act, have made many changes in the valuation of real estate in the several counties, retaining, as the law obliged them to do, the same aggregate valuation for the entire State. It appears that the law of 1850, requiring assessors to attach an affidavit to their valuation, led to an immediate increase of over three hundred million dollars in the valuation of real estate. There was a subsequent steady increase of over three hundred millions more in real estate down to 1856, since which time there has been a decrease of more than a hundred millions. This is believed to be owing to the practice adopted by some counties of systematically

undervaluing the property, an example which the other counties are continually imitating, so as to counteract the injustice which would otherwise be done them. Another year it is probable that the aggregate valuation of the State will be increased. The State assessors, however, have no control over personal property, a very large portion of which now escapes taxation.

The amount of salt manufactured on the Onondaga Salt Springs Reservation, during the year ending September 30, 1859, is within a fraction of seven million bushels, the duty upon which is seventy thousand dollars. The expenditures have been about forty-five thousand dollars, leaving a profit of about twenty-five thousand dollars, of which fifteen thousand have been expended in improvements designed to increase the facilities for manufacturing. The present supplies of brine, and facilities for raising and distributing the same, are adequate to the production of ten million bushels a year, an amount which will probably be attained within a few years. The very general use of coal has put an end to the apprehensions once felt that the high price of fuel would necessarily diminish the amount of salt manufactured.

There were in the State Lunatic Asylum at Utica, at the commencement of the last fiscal year, two hundred and sixty male and two hundred and forty-two female patients. There were received during the year one hundred and seventy males and one hundred and forty-two females. The whole number treated was four hundred and thirty males and three hundred and eighty-four females. The daily average number under treatment was five hundred and nine. The whole number discharged was two hundred and ninety-five, of which one hundred and fourteen were recovered, and fifty-eight improved, while eighty-six were discharged unimproved, and thirty-five died. There remained in the asylum on November 30, 1859, two hundred and seventy-four males and two hundred and forty-five

females. The amount appropriated by the last Legislature for this institution was five thousand five hundred dollars for salaries. All other expenses, except for buildings are paid by the counties.

The whole number of pupils in the New York Asylum for Idiots at Syracuse, during the past year, has been one hundred and thirteen. Of these, ninety-three were the beneficiaries of the State to the full amount of the cost of their board and instruction, while eight received only half the cost, and twelve were paying pupils. There are now one hundred and thirty-seven in the asylum of whom one hundred and twenty are the beneficiaries of the State. The amount appropriated by the Legislature of 1859 was eighteen thousand dollars.

The agricultural interest has been unusually prosperous notwithstanding the partial drouth of summer and early frosts of autumn. Lying, as this great interest does, at the base of our prosperity, you will not omit to extend to it all reasonable care and protection. Its security depends upon an equitable development of all the resources of the State, coupled with a just and economical administration of the government. The moderate annual appropriation for the encouragement of agriculture in the counties, and in support of the State Agricultural Society has been fully returned to the treasury in the enhanced valuation of property and an hundred fold in the general prosperity. The State, county and town societies, at once a source of usefulness and a satisfaction to the public, owe their prosperity, perhaps their existence, to the co-operation of the State. The more general participation in these organizations by many of the best members of the community; the increased interest felt in the pursuit, as manifest in the augmentation of the agricultural press, and the renewed desire for the highest institutions for agricultural instruction, are in part the fruits of this fostering care.

The New York State Agricultural College at Ovid, to

which the State has loaned forty thousand dollars for twenty-one years, without interest, is rapidly progressing toward completion and usefulness. The farm of seven hundred acres embraces a great variety of soils and characteristics, which eminently adapt it to the purposes of experimental as well as of productive farming. Two large buildings are now approaching completion. They are built in the best manner, heated by furnaces, lighted by gas and supplied throughout with water. It is the intention of the trustees to have them in readiness to receive one hundred and fifty students early next spring. When fully completed, there will be accommodations for three hundred students. Forty-one thousand dollars, besides donations of stock and implements, have been thus far contributed by the friends of the enterprise. The institution is under the direction and control of some of the best men in the State. Its usefulness will not fail to be enjoyed by the large class for whom it is designed.[7]

The People's College, now in process of construction at Havana, in Schuyler County, is intended to combine practical and general education with daily manual labor. The site selected is healthy and commanding; the college edifice will be well adapted to its purpose, while two hundred acres of adjacent land, of the highest character for fertility, afford ample field for the development of the system. The buildings, when completed, will have cost nearly two hundred thousand dollars. It is expected they will be ready for students in September. The spirit which animated the enlightened and liberal projectors of this college, if suitably responded to by the philanthropic and wealthy, will produce most beneficial results to the cause of education, and to the agricultural interests of the State.

There have been received into the House of Refuge, New York, in the eleven months preceding November 30, 1859,

[7] By chapter 156, passed April 3, the New York Agricultural College at Ovid was authorized to borrow $30,000 for general purposes.

two hundred and forty-two boys and seventy girls. During the same period there have been discharged two hundred and fifty-nine boys and seventy-five girls. There were remaining at the latter date four hundred and fifty-nine boys and seventy-one girls. The total number of children received into the House of Refuge since 1825, is seven thousand six hundred and fifty-one. The expenses for the year 1859 will be about forty-nine thousand dollars. The girls' house, for the erection of which the Legislature of 1859 appropriated twenty-five thousand dollars, will, it is hoped, be ready for occupation very early in the present year. When it is completed, the institution will accommodate five hundred and sixty boys and two hundred and forty girls, separated and classified so as to make the discipline effective and thorough. Each county is entitled to send to this institution girls under sixteen years of age, and as by a recent law the supervisors are authorized to fix the compensation to be paid for conveying children from their respective counties, it is hoped that this right will be more generally exercised.

The number of inmates in the Western House of Refuge, at Rochester, was, on January 1st, 1859, three hundred and eighty-six; since that time and down to November 23, one hundred and fifty-three have been received, and one hundred and twenty-five discharged, and put to service, leaving at the latter date four hundred and fourteen inmates. The highest number in the institution during the past year has been four hundred and twenty-seven, and the average number four hundred and five. The previous year the average number was three hundred and sixty-five. The average cost of support was, in 1858, eighty-six dollars and fifty-seven cents; in 1859, ninety dollars. The appropriation of five thousand dollars made by the last Legislature, has been expended in extending the wall so as to give more room for shops, and thus to promote discipline. An additional appropriation of seven thousand dollars should

be made to pay a balance still due, and to rebuild the work shops. The regular appropriation for the support of the institution is twenty-five thousand dollars.[8]

The New York Institution for the Instruction of the Deaf and Dumb, contained on the 1st of January, 1859, three hundred and five inmates. There have been admitted during the year, down to December 1, 1859, fifty. There have been withdrawn fifty-eight, leaving in the institution, at the latter date, two hundred and ninety-seven. Of these, two hundred and thirty have been selected as State pupils, though the appropriation by the last Legislature, amounting to thirty-three thousand dollars, provided for only two hundred and twenty, at the rate of one hundred and fifty dollars per pupil. Besides this, there were appropriated twenty-five thousand dollars for buildings.

The New York Institution for the Blind now contains two hundred and five pupils. Twenty-five have been discharged and thirty received during the year. The appropriation made by the last Legislature was twenty-seven thousand dollars, for the support and education of one hundred and eighty pupils.

The New York State Inebriate Asylum, at Binghamton, is not yet completed. The mason work is finished and paid for, but about seventy-five thousand dollars are needed to complete the buildings. The amount of money actually received under the law of April 15, 1859, which granted to this institution ten per cent of the excise moneys, has been twelve thousand six hundred and ninety-six dollars and twenty-one cents, and it is estimated that three thousand and fifty-four dollars more will be received. The fact that over three thousand applications for admission have al-

8 The appropriation act, chapter 412, passed April 16, contained an item of $7,000 for enlarging the yard and buildings, and extending the wall at the Western House of Refuge; $12,000 for an additional wing, and $25,000 for general purposes.

ready been made, shows that though the Inebriate Asylum is an experiment, it is one worthy of encouragement.

The discipline, conduct and efficiency of the police of New York fully vindicate the wisdom and propriety of the metropolitan police law. Even those who opposed its enactment now admit that New York never had so good a police, and citizens of other states propose the introduction into their larger cities of a system similarly conducted. There are seventeen hundred and ten persons employed under the board of police, besides three hundred and twenty-one special policemen who hold commissions but draw no pay from the board. The regularly authorized number of patrolmen, is, in New York, fourteen hundred, and in Brooklyn one hundred and ninety-eight; in both cases, exclusive of officers and doormen. The House of Detention for witnesses is one of the most humane provisions of the metropolitan police act. During the year, four hundred and nine witnesses have been detained there, who, under the old system, would have been confined in jail. The receipts of the board during the past year have been one million one hundred and sixty-seven thousand three hundred and thirty-six dollars and sixty-four cents, and the expenses one million one hundred and fifty-nine thousand four hundred and fifty-three dollars and thirty-two cents. Of the expenses, thirty thousand and five hundred dollars are apportioned to the general office, five thousand eight hundred and twenty-five dollars to the house of detention, one million two hundred and fifteen thousand five hundred and sixty dollars to New York, and two hundred and eleven thousand one hundred and seventy dollars to Brooklyn. The life and health fund now amounts to five thousand eight hundred and seventy-one dollars and twenty-nine cents, and pays pensions to the widows of three policemen. One thousand and seventy lots of stolen property, varying in value from twenty-five cents to three thousand dollars each, have been received

by the property clerk, and six hundred and eighty-four lots, of the aggregate value of thirty-one thousand three hundred and thirty dollars, were restored to the owners. There have been sent from and received at the central office of the police telegraph, during the year, ninety-eight thousand messages, and by its means, two thousand eight hundred and four lost children have been restored to their friends, four hundred and sixty-nine fires reported, and one hundred and sixty-six emissions of counterfeit bills notified. The increased efficiency of the police is shown by the fact that the number of arrests for burglary, a crime the detection of which depends greatly on efficient patrolling, is constantly increasing and has doubled within the last four years. Moreover, the arrests for offences against property have largely increased since 1854, while the reported losses have decreased nearly fifty per cent.

But though the law is thus shown to be wise and judicious, some amendments are needed to give the system its full development. The comparatively small salary allowed by law to the general superintendent is a great obstacle in the way of securing the services of a competent person as the executive head of the force. The restriction should be so far modified as to allow the payment of a salary to that officer at least equal to that paid to other functionaries of similar importance. The supervisors of the counties of Westchester, Richmond and Kings (Brooklyn excepted), have now so long neglected to authorize the appointment of a patrol force in those counties, that it is worthy of consideration whether they should not be compelled to carry out the intent of the law. Amendments should also be made giving power to pay as well as to appoint special patrolmen on election days, and providing more effectually for the furnishing of proper station houses. I am also of the opinion that, now that the force has been successfully organized, the time has come for the reduction of the number of commissioners from seven to three. This would

save considerable expense, without in any degree impairing the efficiency of the organization.[9]

The very general favor that has been manifested towards the Central Park of the city of New York, demonstrates that it will more than realize the high expectations of its projectors. Though it is an undertaking of the municipality within which it is situated, the fame of its attractions and of the fidelity of its management, have marked it throughout the country not only as pre-eminently the foremost work of its kind, but as a standard of taste and skill in all the arts that have been so intelligently combined in its construction. The commissioners having obtained the approval of the common council of the city of New York, will apply to the Legislature for further means to complete this work, and I the more cheerfully commend their application to you, because it appears from official sources that the amount to accrue to the treasury of the city, by reason of an increase in the value of property, on account of the opening of the park, will probably more than afford means for the payment of the interest on the debt incurred for its purchase and improvement, without any increase in the general rate of taxation. The fidelity hitherto shown by the commissioners, who, it may be mentioned, receive no remuneration, affords a guaranty that the money will be carefully expended.[10]

The Legislature of 1859 made an appropriation of fifty thousand dollars to provide "temporary accommodations for persons arriving in the port of New York sick with yellow fever or other pestilential disease," and introduced

[9] Chapter 259, passed April 10, amended the Metropolitan Police District act of 1857, by adding to the district the towns of Newtown, Flushing and Jamaica, in Queens county, and by reducing the number of commissioners from seven to three, who were to be appointed by the Governor and Senate. The act contained numerous amendments relating to administration and was substantially a revision of the former law.

[10] Chapter 85, passed March 19, provided for the construction, regulation, maintenance and government of Central Park in New York, and for additional means to be maintained by the creation of a Central Park stock.

a provision into the bill requiring the Commissioners to remove the sick from the Marine Hospital on Staten Island. Under this last provision thirty-eight persons were removed on June 27, to Ward's and Blackwell's islands. After such removal no sick person could legally be sent to the Marine Hospital. The commissioners, not successful in procuring "temporary accommodations" on land, purchased the hull of an ocean steamer, fitted it up as a floating hospital, and anchored it in the lower bay, about three miles from the nearest land, where it remained till the end of September, when it was removed and anchored off the old Quarantine station. The commissioners for the removal of Quarantine tendered the control and management of the floating hospital to the Commissioners of Emigration, who refused to accept it or to pay the expenses connected with it. The Quarantine Commissioners then proceeded to provide it with a proper medical and other staff. Under their charge it has proved eminently successful, and in the opinion of the Commissioners, has shown that "floating hospitals are well adapted for the treatment of quarantine diseases, and are as safe for the patients and the public as any hospital on land can be, and that they may be relied on as temporary accommodations until a new Quarantine location can be secured and proper buildings prepared." The Commissioners have drawn from the treasury twenty-nine thousand four hundred and five dollars, of which twenty-three thousand three hundred and seventy-seven dollars and thirty-seven cents were for the purchase, finishing, furnishing and anchoring of the floating hospital. A considerable portion of the expense of maintaining it has not been paid, because the Comptroller did not deem himself authorized to pay it. The same experience which has shown that floating hospitals may be relied upon for temporary purposes, teaches that "in point of economy and convenience, they are not as well adapted to the purpose of a permanent Quarantine estab-

lishment as hospitals on land." Efforts for procuring a location for a permanent hospital on land will be continued, and an appropriation should be made to meet the probable cost of the land and necessary buildings; as also for the support of the temporary hospital during the past summer, and till the permanent one is prepared. Authority should be given the commissioners to sell the land and buildings at Staten Island, the proceeds of which will be more than sufficient to pay the cost of the new establishment.

The experience of the past year has shown that the exactions and annoyances to which the commerce of New York has for several years been subjected at quarantine, arose principally from the mode of enforcing the regulations there. But I recommend that the Chamber of Commerce of that city be empowered to establish a rate of charges, for stevedores and lightermen employed in discharging and transporting infected cargoes. Steps have been taken to procure the requisite information, preparatory to suggesting a revision of the health laws.

No appropriation was made last year for the Commissioners of Pilots of the harbor of New York; not, as I believe, because the Legislature did not recognize the importance and value of their services, but it was regarded as a local matter, belonging to the city, rather than to the State, and yet the whole State is interested in preserving and improving the harbor of New York, upon which so much of the prosperity, not only of the city but of the State depends. I recommend that a sum not exceeding five thousand dollars should be appropriated to be expended under the direction of the pilot commissioners for the protection of the harbor.[11]

The act of April 13, 1857, entitled 'An act to regulate the use of slips and wharves of the city of New York,

[11] Chapter 464, passed April 16, appropriated $5,000 for the protection of New York harbor, and repealed all provisions of law providing for the payment of the expenses of the pilot commissioners out of the State treasury.

between piers number two and number ten, East River,' as well as all other special acts of this character, should be repealed. These laws, instead of protecting and facilitating commerce, sacrifice the general public good to benefit private interests.

In pursuance of a concurrent resolution adopted April 17, 1858, the drawings of the map known as the harbor commissioners' map of the harbor of New York, have been continued, and are now nearly completed. The expense was, by the resolution, limited to five thousand five hundred dollars, but a contract has been made for five thousand one hundred dollars, which amount should be appropriated.[12] The physical survey of the harbor of New York has been completed. An expense of two thousand five hundred dollars has been incurred beyond former appropriations which should also be provided.

My attention has been called during the past year to the defences of New York, and I have availed myself of an invitation from the engineer officer in charge, to inspect the fortifications at the Narrows. It is obvious that the approach to New York by water is not now adequately defended. Its defensive system has not yet received the full development contemplated by the able board of engineers, which immediately after the war of 1812 devised it. Since that date and particularly within the period commencing with the application of steam to ocean navigation, the means of maritime attack have assumed a character and power quite unanticipated when the existing system was devised. The port of New York has become the great emporium of commerce of the nation. Three-fourths of its entire revenues in the shape of duties upon imports are collected there. Its perfect defensibility, therefore, is a matter of national importance. But it is of especial interest to the people of this State, and as their representatives,

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12 Chapter 412, passed April 16, appropriated $5,100 for the completion of the harbor commissioner's map.

you are invited to consider whether some action of your own may not aid in procuring from Congress the means for the prompt completion of our defensive works.

The number of vessels surveyed by the wardens appointed under the "act to reorganize the Warden's office of the port of New York," passed April 14, 1857, was, during the first eleven months of the year 1859, three thousand two hundred and sixty-eight, against two thousand three hundred and thirty-eight surveyed during the entire year of 1858. The number of surveys made during the eleven months of 1859, was ten thousand three hundred and thirty-seven; during the entire year of 1858, seven thousand and twenty-two. The gross receipts of the office during the eleven months of 1859, was thirty thousand two hundred and thirty-four dollars and seven cents, and the expenses four thousand two hundred and seventy-three dollars and sixteen cents. During the year 1858, the gross receipts were twenty-four thousand five hundred and seventeen dollars and eighty-three cents, and the expenses five thousand three hundred and thirty-one dollars and seventy cents. The increase is probably due to the natural revival of business from the commercial depression of 1857 and 1858; to the decision of the Court of Appeals affirming the constitutionality of the law;[13] and to the increasing confidence of the public in its wisdom and propriety.

The gross amount of fees received by the Harbor Masters of the port of New York, during the eleven months from January 1, to November 30, 1859, was thirty-one thousand, two hundred and fifty dollars and forty-five cents. The number of vessels that arrived during that period was eleven thousand, eight hundred and forty-six, of which seven thousand five hundred were under a coasting license, and therefore paid no fees. The law relating to the harbor regulations requires amendment. The piers

[13] Governor Morgan probably referred to Tinkham v. Tapscott (1858), 17 N. Y. 141, which sustained the port warden's act of 1857, chapter 405.

and wharves of New York and Brooklyn are now divided into eleven districts, each assigned to one harbor master, who has entire control over his district, and acts upon his own construction of the law. There should be established an officer corresponding to the captain of the port of most European cities, who should have a central office, where a list of all vacant berths should be kept, and who should establish a general and uniform system of regulations. The harbor masters should be under this supervision.[14]

The number of alien passengers who arrived at the port of New York, during the year 1859, and for whom commutation money has been paid, was seventy-seven thousand six hundred and fifty, against seventy-eight thousand five hundred and sixty-two in 1858. The Commissioners of Emigration have refunded to the several counties, on account of advances made by them, twenty-three thousand five hundred and thirty-five dollars and seventy-five cents, which leaves a balance due the counties of forty-five thousand eight hundred and fifteen dollars and seventy-three cents. This amount the Commissioners hope to pay in full within a few weeks. The number of emigrants remaining in the institutions on Ward's Island is seven hundred and thirty-seven, against one thousand one hundred and nineteen last year. The expenses of these institutions were fifty-three thousand six hundred and forty-eight dollars and forty cents in 1859, and seventy-eight thousand five hundred and eighty-six dollars and thirty-eight cents in 1858. The aggregate expenditures of the Commissioners, exclusive of the amount refunded to counties, were one hundred and sixty-three thousand two hundred and forty-four dollars and twelve cents in 1859, and two hun-

[14] Chapter 436, passed April 16, created the office of captain of the port of New York, which was to be filled by appointment by the Governor and Senate. He was vested with power to prescribe regulations for the government of the harbor masters, and was given general supervision of harbor affairs.

dred thousand nine hundred and seventy-five dollars and nine cents in 1858.

The continued and unexampled growth of the city of New York has brought with it the necessity of providing more means of access to the upper part of Manhattan Island. I recommend, therefore, that the number of railroads in the upper part of the city of New York be increased. In doing this, however, care should be taken, while limiting and equalizing the rates of fare on all railroads in that city, to render the valuable franchise a source of income to the city.[15]

It is believed that the State is the owner of valuable property in and around the city of New York, now in the possession of others, in relation to which the rights of the State should be maintained by prompt and vigorous measures.

I recommend to your careful attention the highly important subject of the public health, especially in the city of New York. A considerable personal experience, obtained in an official capacity during the prevalence of epidemic cholera in 1849, convinced me that the absence of scientific sanitary supervision was even then a great defect in its municipal organization.[16]

Having been officially informed by the Governor of Connecticut that he had appointed a new commission for the purpose of settling the disputed boundary between that State and our own, and determined to meet this action on the part of our sister State in a proper spirit, I appointed

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[15] See special message of April 16, *post*, p. 238, vetoing several railroad bills.

[16] By chapter 436, passed April 16, school authorities in cities and towns were authorized and directed to exclude from school children who had not been vaccinated. Such authorities were also authorized to appoint a physician to vaccinate the children and provide for the expense of vaccination by taxation.

This act was repealed by the public health law of 1893, chapter 661, but its provisions were substantially re-enacted in sections 200 and 201. The act of 1893 was sustained in Viemeister v. White (1904), 179 N. Y. 235.

commissioners on the part of this State. The representatives of the two States have met and formed a joint board, and have examined the disputed territory, but after several meetings, have been unable to agree upon a basis for settlement. I still hope that the matters in dispute will be satisfactorily adjusted; but should this not be done, some action on your part may become necessary during the present session.[17]

The act of April 12, 1853, to "provide for the care and instruction of idle and truant children," has remained almost a dead letter upon our statute book. The law contains a general provision making it the duty of all police officers to enforce it, but this end would be much better accomplished if each city and town were required to make it the especial duty of some officer.

Breaches of trust in various forms, by persons acting in fiduciary capacities, have been so frequent as to render necessary a revision of the laws applicable to such cases, and the enactment of provisions more adequate to the prevention of this increasing evil than now exist. These provisions should be broad enough to include defalcations by public officers, by the directors and agents of corporations, and by persons invested with private trusts, and to include all other acts and omissions with fraudulent intent whereby the trust should be endangered; all such offences should be punished criminally.

Power should be given to the Governor to suspend for misbehavior, during the recess of the Senate, all officers whose removal or suspension is not otherwise provided for.

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[17] Chapter 159, passed April 4, 1860, directed the New York commissioners to proceed to ascertain the boundary line between New York and Connecticut according to the survey of 1731. Before beginning the survey they were to serve notice on the Connecticut commissioners inviting them to join in the survey, but in case of a neglect of the Connecticut commissioners so to join, the New York commissioners were to proceed independently of them and make the required survey. The act appropriated $5,000 for previous and subsequent services and expenses of the commissioners.

I think it both desirable and just that all resident aliens should be empowered to acquire, hold and convey real estate at their pleasure. To refuse this right, is a narrow and proscriptive policy which the State of New York should not sanction.

There is a tendency to seek special legislation for the accomplishment of objects attainable under general laws. New York, long since, wisely decided that such legislation should not be encouraged, and incorporated this principle into the Constitution of 1846.[e] I recommend that the policy of general laws be adhered to. By extending the powers of the Boards of Supervisors, the convenience of the people would be promoted and the time of the Legislature saved.

I had occasion at various times to communicate to the last legislature my views of the constitutional provision on the subject of special acts of incorporation for purposes other than municipal. Further reflection has strengthened my convictions of their justice.

Village charters occupy a considerable portion of our annual volumes of laws. They are filled with minute details, which might readily be comprehended in one general act, applicable to all cases, leaving to be provided for by special charters only the peculiar provisions which are doubtless necessary in some cases.

The general law providing for the change of names is found, in practice, not to apply to infants. It should be changed in that respect.[18]

The failure of several railroad companies to pay the interest upon their mortgage debts, and the delays interposed to prevent the execution of the contracts by the transfer of the road to the trustees named in the mortgages, and the

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[e] Const. 1846, art. 8, § 1.

[18] The Governor's suggestion was adopted, and the change of names of minors was provided for by chapter 80, passed March 17, amending the former statute.

great depreciation and loss which are thereby occasioned, show that our laws are imperfect. The State of Connecticut has enacted a law requiring the courts, on the petition of any bondholder or secured creditor, to put the trustees in possession of the road and all its appurtenances, without delay. Such a law carries out the obvious contract of the parties, and is perfectly just to all. I recommend a similar enactment for this State.

The past year has furnished melancholy evidence that our railway companies do not always maintain their road-beds in a condition to insure the safe transportation of passengers over them. Authority should be conferred upon some officer to prevent the turning of a wheel on any road which is not in a safe condition. I recommend that the State Engineer and Surveyor be required, whenever complaint is made to him, or he has reason to believe it necessary, to examine the road-bed and the bridges of any railroad, and if, in his opinion, they are not safe, then to apply to any judge of the Supreme Court and obtain from him a summary order, closing the road till it is put in proper condition.

It appears from the report of the Secretary of State, that during the year 1858 relief was granted by the public in two hundred and sixty thousand one hundred and fifty-five cases, equal to seven and four-tenths per cent of the entire population, at an expense of one million four hundred and ninety-one thousand three hundred and ninety-one dollars and twenty-eight cents. Of those relieved, forty-one per cent were natives of this country, and fifty-nine per cent were foreigners. While in the twenty years, from 1831 to 1851, the population of the State increased only sixty-one per cent; pauperism increased, in the same period, seven hundred and six per cent. In 1831, there was one person relieved to every one hundred and twenty-three inhabitants; in 1841, one to every thirty-nine; in 1851, one

to every twenty-four, and in 1856 one to every seventeen. Though many persons doubtless received relief in more than one place, and therefore appear repeatedly in the returns, and though many of the persons relieved were not paupers, in the ordinary sense of the word, it is still clear that the evil is a great and increasing one, which urgently demands a remedy. Those most conversant with the subject are of the opinion that, although the existing laws are correct in principle, there is an imperative necessity for such legislation as shall secure their more certain and prompt enforcement.

The excise law, in part through its own defects, and in part through the action of those whose duty it should be to enforce it, has not produced the good results that were expected, or of which it is capable. The time within which meetings for the granting of licenses may be held, should be limited so that they may not be prolonged through the year, as is now the case in some localities; and some restrictions should be imposed as to the number of licenses that may be granted. It is not improbable that other amendments are also needed, but I deem these two important.[19]

The Legislature of 1859, by the passage of concurrent resolutions, initiated an important amendment of the Constitution designed to improve the efficiency and stability of the Court of Appeals. Experience has shown that the frequent changes in the judges of that court tend to prevent the despatch of business with the rapidity and certainty that is imperatively demanded. The last legislature also initiated another amendment of the Constitution, abolishing the property qualification for men of color. Both of these proposed amendments must be adopted by you before

[19] The Governor's suggestions as to excise licenses were not adopted, but by chapter 273, passed April 11, excise commissioners were required to report annually to the Board of Supervisors.

they can be submitted to the people, and by their sanction become a part of the fundamental law.[20]

Towards the close of the last session of the Legislature I felt it to be my duty to return with my objections a bill "to facilitate the construction of the Albany and Susquehannah Railroad," which bill made an appropriation of two hundred thousand dollars from the treasury. The Legislature was induced to grant that aid, it is presumed, in consideration of the fact that the section of the State through which that road is to run, is isolated, and has not directly participated in the liberal expenditures for improvements, by means of which other portions of the State have been so largely benefited. The reasons which led me to withhold my approval from the bill were conclusive to my mind, and under similar circumstances would lead to the same action. This measure has been presented to the people, accompanied by my objections, and may return for reconsideration. It may be proper, therefore, in this changed aspect of the question, to say at this time, that if the immediate representatives of the people, chosen as the entire Legislature has been since my objections were made public, deem the aid of the State due to a sequestered section, and think proper to pass by a constitutional vote, a bill for that object, providing therein, by tax or otherwise, the money to pay whatever appropriation is made, I shall yield my own opinions to the will of the people thus expressed.[21]

No efforts should be omitted to maintain the dignity and purity of legislation, uninfluenced by the importunities of those who resort to improper means to effect it. I deem it

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[20] The amendment abrogating the qualifications of colored voters was adopted again at this session, and by chapter 349, passed April 13, was submitted to the people. It was rejected at the November election in 1860. The judiciary amendment was not again adopted by the Legislature.

[21] See special message of April 17, vetoing the bill to facilitate the construction of the Albany and Susquehanna railroad. The bill was not passed over the veto.

unnecessary to repeat the views expressed in my first annual message upon this subject, but it is my intention to do everything in my power to put an end to the abuses which exist. Officers whose duties are at a distance from Albany, should not leave their posts and make it a business to procure or prevent legislation. If in the discharge of their official duties they perceive defects in the laws, they may rightfully point them out to the proper committees, but to do more is misconduct, and will be regarded as sufficient ground of removal from office.

The Legislature of 1859 gave effect to that provision of the Constitution, which requires "that laws shall be made for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage."[f] The experience gained at the recent State election, has shown that as a whole, it has fully answered its purpose, even amid the difficulties inseparably connected with the introduction of a new law of this character, and notwithstanding the attempts in some quarters to embarrass its action. The great object of excluding from the ballot-box all illegal votes, has been substantially attained, so that every elector may be sure that he can exert his due influence in the choice of rulers. Some few amendments to the law are, however, needed. The registers already prepared should be the basis of those used at future elections, but the registering board should meet prior to each election, and after hearing testimony, add the names of legal voters not alrealy on them, and erase those not rightfully there. A list showing only those added and those stricken off should then be prepared and published. Distinct authority should be given to inspectors of election to administer oaths, and it should be made a misdemeanor to receive the vote of any person who is not registered, and who has not complied with the law. When these and perhaps a few other changes are

[f] Const. 1846, art. 2, § 4.

made, I feel sure, that by its quiet, effectual and inexpensive operation the system will commend itself to all. Every effort should be made to encourage, and, perhaps, compel the legal voters to exercise the right of voting, which is at once a privilege and a duty. An effectual means of contributing to this desirable end would be to make the day of all general elections a legal holiday.[22]

Without wishing to give undue importance to the subject which, for so many years has agitated the country, I nevertheless am constrained to say that it continues to maintain such proportions, that I do not feel at liberty to disregard it in my annual message. It is not to be denied that there is an apparent determination on the one hand to extend and strengthen the institution of human slavery as a political power on this continent, and on the other, an equally determined spirit to resist its extension and influence. So long as the leaders of opinion in all sections of our country were substantially agreed in the sentiment that slavery was an anomaly, and an evil to be restricted and endured until time and opportunity should indicate the means of its peaceful and gradual extinction, it was not a source of fraternal discord and sectional strife, and could not have been made one. But the novel doctrines which affirm that slavery is no evil at all, but a positive good, a good to be commended, diffused, perpetuated — and which logically require the conversion of our present federal territories into new slave marts, and the acquisition of additional provinces and islands, expressly to fortify and increase the power of this social evil, are plainly incompatible with that perfect amity and concord, between different sections and States, which it is the interest of all, and the desire of the people of this State, at least to maintain through all time.

New York yields to none of her sister States in her de-

22 Election day was made a public holiday in 1872, by chapter 544, passed May 6.

votion to the Union. She reveres it as the fruit of a long protracted contest for liberty and independence, and she cherishes it for its present benefits and its guarantees for the future. Her citizens discovered at a very early period that slavery was an evil, and prompt and considerable provision was made for its extinction. So far as our example was worthy of imitation, the other members of the Confederacy had the advantage of it; but we never claimed that we had the right to interfere, directly or indirectly, with slavery as it existed in the other States of the Union. We were satisfied with the solemn and earnest declarations recorded upon our statute book that we regarded slavery as a governmental and social evil, and treated it accordingly. New York still maintains the same position. She emphatically disavows all sympathy or co-operation with those misguided men who, no matter under what provocation, have sought in the past or who may seek in the future unlawfully to interfere with the institutions of any of her sister States.

That the offenders, in the recent invasion of Virginia, intended to subvert the existing government and establish in its stead another more consonant with their notions of justice and equal rights, is not certain; that they proposed to liberate and arm the slaves of that region, and aid their escape to a foreign country, is beyond dispute. And that purpose, it need hardly be observed, was unlawful and certain to be resisted at all hazards. Bloodshed thus incited, rests, in the eye of human law, on the heads of those whose violation of laws provoked or caused it. We may admit that their aims were unselfish and even philanthropic — that they honestly believed and felt that they were risking liberty and life in behalf of the wronged and oppressed — but we must never forget the obvious truth, that social order can only exist through a general recognition of the sanctity of law, and that tranquillity and security must vanish from that community wherein every one shall feel

at liberty to redress whatever he deems grievous by raising his arm against the authorities and the laws.

Another question, however, is presented, when it is proposed to establish or to permit the establishment of slavery in the territories. Being the common property of the whole people, so long as they remain territories New York will claim the right to participate in their government. In no way can she do so, except through the agency of her chosen representatives in Congress; and therefore it is that the electors of New York recognize the authority of Congress, to legislate for the territories and to prohibit the establishment of slavery therein. Yielding cheerful obedience to the doctrines of State sovereignty; having no disposition to interfere with the local institutions of the States; prepared at all times to aid those States in the preservation of their sovereign power, the people of New York, while always enforcing their views in a legal, peaceful and constitutional manner, will not surrender the right to participate in the reformation of this or any other evil in the administration of the national government.

EDWIN D. MORGAN.

Albany, January 3, 1860.

SPECIAL MESSAGES.

January 6. To the Assembly: Transmitting the report of the board of Metropolitan Police, and the report of the survey of the harbor of New York, and the harbor commissioners' map.

January 16. To the Senate:

"ALBANY, *January* 16, 1860.

"I transmit herewith the report of the Commissioners for the removal of Quarantine Station. Some of the suggestions it contains were referred to in my recent annual message, and are of a nature to call for early action on the part of the Legislature.

E. D. MORGAN."

January 16. To the Assembly: Transmitting the annual report of the trustees of the New York State Agricultural College.

January 20. To the Assembly: Transmitting the annual report of the Commissary General.

January 23. To the Assembly: Transmitting the following communication from the Tonawanda band of Seneca Indians:

"To the Governor and Legislature of the State of New York:

The Tonawanda band of Seneca Indians, respectfully show: That they have occupied the twelve thousand eight hundred acres tract, known as the Tonawanda Reservation, in the counties of Genesee, Erie, and Niagara, from time immemorial.

They are a separate band of the New York Senecas, and as such, were described as embraced in the treaties made with the Seneca nation of Indians in the years 1838 and 1842, by which the Ogden land company sought to deprive them of their lands. It is now a part of the public history of the country, that no man, woman, or child, of the Tonawanda band, assented to either of these treaties, but in every practicable mode, protested against, and resisted both of them. Ever since the ratification of these treaties, the Tonawandas have maintained the possession of their lands except as they have been molested by intruders, and have submitted their claims to the courts of this State, and to the Supreme Court of the United States.

At length, in January, 1857, and again in March last, it was finally and distinctly adjudged, by the Supreme Court of the United States, that notwithstanding the treaties of 1838 and 1842, the Tonawanda Reservation had never lost its character of Indian territory, and that Court affirmed a judgment of the Court of Appeals of New York, in which it had been decided that it was the duty of the county judge, of Genesee county, to entertain summary proceed-

ings for the removal of those white persons from the Reservation, as intruders, who had entered and settled under the Ogden land company.

It was also adjudged that the character of the Reservation, as Indian territory, would not be changed until the Executive Department of the general government had not only decided that these treaties were operative against the Tonawandas, but had also executed the treaties, by the removal of the Indians.

In order to settle the long controversy, in which the Tonawandas had been involved with the Ogden land company, the United States government made a treaty with them in November, 1857, by which the Tonawandas relinquished all supposed advantages and interests in lands in Kansas, to which they would have been entitled had they consented to the execution of the treaties of 1838 and 1842, and, in consideration thereof, the United States provided a fund to be expended by an agent appointed for that purpose, in extinguishing the pre-emptive right of the Ogden land company, and vesting a title in fee simple in the Indians to their Reservation.

Nearly seven thousand acres have, by these proceedings, been already secured to them, and they are at length established in the peaceful occupation of the largest portion of their lands. It is their purpose to surrender up about five thousand acres, and avail themselves of the provisions in the treaty, by which the money which would be expended to extinguish the pre-emptive right to that portion of their lands, may be permanently invested for their benefit.

During the period which has elapsed, while the litigation has been progressing in the courts to determine their rights, their lands have been subjected to taxation, on the assumption that their character, as Indian lands, had been changed by force of the treaties of 1838 and 1842. At a sale of lands for taxes, conducted under the direction of the Comptroller of this State, in November last, a large

quantity of the Reservation was sold, and bid in by that officer for the State.

The Tonawandas look to the State for protection and encouragement, and they respectfully ask the Legislature to pass some appropriate act to relieve them from apprehension and difficulty, by reason of this sale referred to. They feel assured, by the action of the Legislature in respect to the lands of their brethren on the Cattaraugus and Allegany Reservations, in 1857, that these taxes are not valid, and that they ought to be relieved from the expense and hazard of litigation, to which they may be subjected in consequence of these taxes, should the Legislature omit or refuse to interpose in their behalf.

In this connection they refer to the report of the Senate committee on the judiciary, No. 28, made on the 22d of January, 1857, and the act accompanying that report, which was passed by the Legislature, entitled 'An act to relieve the Seneca nation of Indians from certain taxes on the Allegany and Cattaraugus Reservations.'

The Tonawandas further respectfully show, that their Reservation is located principally in the county of Genesee, although a few acres are within the county of Niagara, and still more in the county of Erie. Their houses and improvements are nearly all in the county of Genesee, and they have long been accustomed to apply to the public officers of that county for protection against intruders. It would be inconvenient and difficult for them to apply to the officers of Niagara and Erie counties.

They respectfully ask that the Legislature will pass an act extending the jurisdiction of the county judge of Genesee county, and of the Justices of the Supreme Court, so as to authorize either of those officers to hear complaints, and to issue warrants for the removal of intruders from their Reservation, according to the provisions of the act passed in 1821, entitled 'An act to prevent intrusions on Indian lands, and for other purposes.'

They further respectfully ask the attention of the Legis-

lature to the treaty made with them by the United States in November, 1857.

It will be seen that the title obtained for them, from the Ogden land company, is conveyed to the Secretary of the Interior of the United States and his successors in office, to be held by him in trust for the exclusive use, occupation, and enjoyment of the Tonawanda Indians, until the Legislature of this State shall designate some person or public officer in this State to take the title, upon a similar trust, whereupon it becomes the duty of the Secretary of the Interior to convey the same to such person or public officer.

The Tonawandas respectfully ask the Legislature to pass an act designating some public officer of this State, to receive a conveyance of said lands to him and his successors in office, in trust, to be held for the exclusive use, occupation, and enjoyment of the Tonawanda band of Indians, according to the provisions of the said treaty.

Finally, the Tonawandas submit themselves to the protecting care and guardianship of the State of New York, to aid in their improvement, and give them peace in their ancient home, now happily confirmed to them.[23]

THE TONAWANDA BAND OF SENECA INDIANS,
BY JOHN H. MARTINDALE,
Their Agent and Counsel.

January 20, 1860.

January 27. To the Legislature:

"ALBANY, *January* 27, 1860.

"Information has just reached me that the Governor and Legislature of Kentucky and the Legislature of Ten-

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[23] See New York ex rel. Cutler v. Dibble (1858), 21 How. (U. S.) 366, affirming 16 N. Y. 203.

Chapter 491, passed April 17, extinguished the title of the State acquired in the reservation lands by virtue of a tax sale, and the act provided for the reimbursement of persons who had purchased any part of the lands from the State. The act also prohibited any further taxation of the Tonawanda reservation land, and authorized justices of the peace to issue warrants for the removal of the intruders.

nessee, are now at the capital of Ohio, by invitation from the Legislature of that State.

So marked and so unusual an occurrence as the visit of the representatives of two sovereign States at one time, to those of another, is evidently calculated to foster that comity and good neighborhood due from the representatives of all the States towards each other. I recommend that, dispensing with the usual forms in such cases, you adopt a concurrent resolution inviting the Governor and the bodies mentioned, to extend their visit to this Capital.

E. D. MORGAN."

The Legislature accordingly on the same day, adopted a concurrent resolution requesting the Governors and Legislatures of Kentucky, Tennessee and Ohio "to visit this capital as the guests of the State."

This resolution was immediately transmitted to Governor Dennison at Columbus, Ohio. On the 28th, Governor Morgan received a telegram from Beriah Magoffin, governor of Kentucky, T. H. Newman, President of the Senate of Tennessee, and William Dennison, Governor of Ohio, informing him that the invitation was received too late for present acceptance, but that it would be communicated to their respective Legislatures.

On the 15th of February, Governor Morgan transmitted to the Legislature the following communication from Governor Dennison:

STATE OF OHIO, EXECUTIVE DEPARTMENT,
COLUMBUS, *February* 7, 1860.

To his Excellency, E. D. MORGAN, Governor of New York:

SIR.—I have the honor to transmit herewith a copy of resolutions adopted by the General Assembly of this State, in reference to the very generous invitation of the Legislature of New York to the Legislatures and Executive Officers of Kentucky, Tennessee and Ohio, to visit their Capital.

I am happy in being able to assure your Excellency, that only an imperative regard for the public interests at home prevented the Legislature and Executive Officers of this State from accepting the invitation, and I cannot doubt, from the patriotic and fraternal manifestations so earnestly exhibited by our brethren of Kentucky and Tennessee, in their recent visit to this city, that a like consideration compelled them to forego the pleasure of visiting your noble State.

I have the honor to be,
With the highest respect,
Your obedient servant,
W. DENNISON.

Governor Dennison transmitted a copy of the resolution adopted by the Ohio legislature, expressing its appreciation of the "comity and good neighborhood manifested by the invitation."

January 30. To the Assembly: Transmitting the report of the receipts and expenditures of the Cooper Union.

February 9. To the Assembly: Transmitting the report of the commissioners appointed under the act entitled "An act to authorize the selection and location of certain grounds for public parks, and also for a parade ground for the city of Brooklyn." [See Assembly Document No. 63.]

February 28 and March 1. To the Senate and Assembly respectively:

"ALBANY, *February* 27, 1860.

"I deem it my duty again to call the attention of the Legislature to the imperative necessity which exists for increasing the revenue to be derived from our public works. I do this at this time because one-half of the ordinary session of the Legislature has passed without any decisive

steps having been taken in that direction, and because there seems not to be a full appreciation of the duty imposed by the Constitution to return to the financial policy which existed at the adoption of that instrument.

In my recent annual message, I said:

'Prior to the year 1844, there were great differences in the positions of the railroads with reference to the transportation of merchandise. While some of them were allowed to carry it during the entire year without limitation, others were permitted to do so only when the canals were closed, and on payment of tolls, while one, at least, was absolutely forbidden to carry freight at all. In 1844, however, an approach to a more uniform system was made, by giving to all roads that did not previously possess it, the right to transport freight during the suspension of canal navigation, and by requiring all the railroads along the line of the Erie and Oswego canals to pay the same rates per mile on freight transported over them as it would have paid if carried on the canals. In 1847 all railroads along the Central line were permitted to carry freight the entire year, and required to pay tolls. In 1850 the same provisions were, by the general railroad act, made applicable to all railroads running parallel to and within thirty miles of any canal. In 1851 all tolls were abolished upon freight carried over railroads, under the expectation that the revenues from the enlarged canals would prove adequate to the payment of the interest upon the canal debt.

'During the time that tolls were imposed upon the railroads the amount received from them by the State steadily increased from ten thousand four hundred and fifty-eight dollars and forty-four cents, in 1845, to one hundred and sixty-three thousand two hundred and thirty-seven dollars and twenty cents, in 1851. On the through freight carried the whole length of the line of the Central railroad in 1857, the tolls, at the two mill rates, would have been four hundred and twelve thousand nine hundred and fifty-six dollars

and fifty-seven cents, and in 1858, four hundred and forty thousand four hundred and ninety-five dollars and twenty-eight cents. On the through freights carried over the New York and Erie railroads in 1857, the tolls at the same rate would have been about three hundred and fifty thousand dollars.

'Since 1851 the tolls received from the canals have steadily decreased from three millions seven hundred and three thousand nine hundred and ninety-nine dollars and thirty-one cents, the amount in 1851, to one million eight hundred and twelve thousand two hundred and eighty dollars and eighty cents, the amount in 1859, though the tonnage has remained about the same, having been three million five hundred and eighty-two thousand seven hundred and thirty-three tons, in 1851, and three million six hundred and sixty-five thousand one hundred and ninety-two in 1859. The loss in tolls has been caused by the diversion from the canals to the railroads of a large portion of those classes of freight which formerly paid high tolls, and which the heavy reductions in canal tolls failed to retain, while the tonnage of the canals has been maintained by the increase in those classes of heavy freight which the railroads cannot profitably transport. Examination shows that the tonnage of the railroads is largely in excess on all classes of freight except the products of the forest and vegetable food, and that even in the latter class the railroads are gaining rapidly.

'If, therefore, the constantly increasing amount of freight carried over the railroads has occasioned a corresponding diminution of our canal revenues, until the interest on the canal debt, formerly paid from these revenues, has now to be drawn by direct taxation from the people, is there not an imperative necessity for protective legislation? I cannot doubt either the wisdom or the justice of re-imposing, for a few years, a moderate toll per ton, during the season of navigation, upon all freight passing over railroads compet-

ing with the canals, or of requiring these roads to pay an aggregate equivalent in money, annually, into the treasury. When the canals shall have been completed, the railroads should be relieved from a burden temporarily imposed, so that commerce may have the advantage of the quickest and cheapest means of transit for merchandise and produce to and from the vast and bountiful west.'

The argument in favor of the reimposition of tolls upon the railroads, might have been extended by instituting a comparison between the traffic of the railways and that of the canals since 1851. While the tolls received from the canals have been, as I have shown, steadily diminishing, the tonnage and revenues of the railroads derived from freight have largely increased. In 1853, the number of tons of freight carried over the Central and Erie railroads was nine hundred and ninety-one thousand; in 1857 it was one million eight hundred and sixteen thousand; in 1858, notwithstanding the general depression of business, one million five hundred and eighty-two thousand, and in 1856, one million seven hundred thousand.

If we take the Central railroad alone, as the one which comes more directly in competition with the canals, the result is the same. In 1853, the tonnage was three hundred and sixty thousand tons, and in 1859 eight hundred and thirty-four thousand. The receipts of this road from freight were one million eight hundred and thirty-five thousand dollars in 1853; four million five hundred and fifty-nine thousand dollars in 1857; and three million three hundred and thirty-seven thousand dollars in 1859.

In short, while the tolls from the canals have decreased from three million seven hundred thousand dollars in 1851, to one million eight hundred thousand dollars in 1859, the receipts of the Central railroad from freight have increased from one million eight hundred thousand dollars in 1853, to three millions three hundred thousand dollars in 1859.

That the re-imposition of tolls on railroads would not be

onerous to any one of them, is shown by the fact that those most conversant with the subject are of the opinion that the amount the roads would be required to pay into the treasury would be about half a million of dollars, though the amount which such a measure would indirectly produce would be very much larger. I am aware that it is sometimes urged that any toll upon the railroads would drive business from this State to the competing roads of other States, without benefiting the treasury. But the single fact that as soon as canal navigation ceases the rate of transportation is largely advanced, though the facilities of the rival roads for competing are at the same time largely increased in every respect, affords abundant evidence that no such result need be apprehended.

I have referred to this subject hitherto, as I did in my annual message, as a matter of financial policy required by the public interest. But I deem it necessary to remind the Legislature that it involves a constitutional obligation which must be met. Both the Constitution of 1846, and the amendment of 1854 pledged the revenues of the canals to the payment of the interest and principal of the public debt, and the public creditor has therefore both a legal and a moral right to insist that the revenues thus solemnly guaranteed to secure the payment of his debt, shall not be diverted or dissipated. If the Constitution forbids the Legislature to dispose of the canals,[g] does not this provision also forbid them to divert or destroy their revenues?

It seems clear that the Legislature is, by the Constitution, deprived of any authority to interfere with the revenues of the canals in any way which shall render them insufficient to meet the requirements of that instrument, and both the Legislature and the Canal Board fail to perform their whole duty when they fail so to adjust the tolls as to produce the greatest amount of revenue.

If the revenues exceed the amount called for by the con-

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g Const. 1846, art. 7, § 6.

stitutional pledge, we may so deal with the excess as to accommodate local or private interests, but not otherwise. In other words, the canal policy of the State must be governed with reference to revenue mainly, till the sum demanded by the Constitution is secured, and if misled by too sanguine anticipations, the Legislature, in 1851, entered upon a course which has resulted in a serious diminution of that revenue, it is an imperative constitutional duty to retrace the step then taken, and to provide a revenue adequate at least to meet the claims of the public creditor, to do which, it must be admitted, is the highest duty of a State.

The report of the Auditor of the Canal Department for the present year contains two tables which show most conclusively that the law of 1851, relieving the railroads from tolls, was a serious error. One of them is an estimate which was submitted to the Constitutional Convention in 1846, of the tolls and net revenue from the canals for ten years from that period. The other exhibits the actual tolls and actual net revenue for those same ten years. These tables show that during every year from 1846 to 1851 inclusive, the actual receipts and net revenue exceeded the estimated receipts and net revenue; while during every year from 1853 to 1855 inclusive, both the actual receipts and net revenue were much below the estimates. This diminution, coincident in point of time with the removal of tolls from the railroads, though perhaps due in part to other influences, must be ascribed principally to the measure of 1851; a measure which I hazard nothing in saying could never have become a law if the Legislature had not fully believed that the enlargement of the canals insured the amount required by the Constitution.

The Constitution disposes of the revenues derived from the canals,[h] annually, in the following manner:

1st. To pay the expenses of collection, superintendence and ordinary repairs.

[h] Const. 1846, art. 7, §§ 1, 2, 3, am. 1854.

2d. To pay the interest and provide a Sinking Fund to pay the principal of the old canal debt, one million seven hundred thousand dollars.

3d. To pay the interest and provide a Sinking Fund to pay the principal of the General Fund debt, three hundred and fifty thousand dollars until the old canal debt is provided for, and then, for the same purpose, one million five hundred thousand dollars.

4th. To pay interest and provide a Sinking Fund to pay the new canal debt in eighteen years, which debt now amounts to twelve million dollars, and will require for interest annually, seven hundred and ten thousand dollars.

5th. For the support of government, two hundred thousand dollars.

6th. The remainder to be expended every year upon the canals until they are completed, and after that as the Legislature may direct.

Estimating the expenses of collection, superintendence, and ordinary repairs at five hundred thousand dollars, the Constitution then calls for three million four hundred and sixty thousand dollars of annual revenue from the canals, and there is no reasonable doubt that, by just legislation and a proper adjustment of canal tolls by the Canal Board, a permanent revenue of nearly, or quite that sum may be realized. If it is not, the people must continue to be taxed for the payment of interest.

Taxation is the only resort to provide means for the support of government, for the schools, the charities and for interest and sinking fund contribution on the loan authorized by the people in November last. For these purposes fully 2¼ mills on the dollar of the valuation of 1859 will be required. If the railroads are to be permitted still to destroy the ability of the canals to meet the constitutional requirement upon them without any equivalent on their part, and tolls on the canals remain as they now are, and present and prospective deficiencies in revenue are to be

provided by direct taxation, there will then be a levy necessary for such purpose to be imposed, at the present session, of 1¾ mills more, and this is exclusive of any appropriation to supply means for securing a uniform water way of seven feet on the Erie and Oswego canals, a measure required by the public interests, and exclusive of many other applications for aid from the treasury.

In 1854 the revenues were for the first time inadequate to meet all the requirements of the Constitution, the two hundred thousand dollars for the support of government not having been paid that year. In 1856 the canal revenues were insufficient to meet the interest on the new canal debt of twelve million dollars; in 1857 they were only sufficient to pay a portion of the $350,000 due to the General Fund Debt Sinking Fund, and in 1858 they for the first time failed to meet the first constitutional requirement of one million seven hundred thousand dollars, for the interest and principal of the canal debt, and have ever since continued inadequate for that purpose. The total deficiency to meet the constitutional requirement will be on the first of October next, about five million seven hundred and fifty thousand dollars, and is increasing at the rate of about two millions a year. Of the total deficiency, about four million seven hundred and fifty thousand dollars is the amount diverted from the fund solemnly pledged by the Constitution for the payment of the public debt. Besides this large aggregate, there is the further sum of about three million dollars which has been raised by taxation and expended upon the canals which the Constitution requires shall be eventually paid from their revenues.

We have now arrived at a point where the public creditor has no positive security that the interest and principal of his debt will be paid as it becomes due. He knows that it will not be paid from the fund consecrated to it, for that has been rendered insufficient by legislation. It was the intention of the Constitution that he should have a definite

fund or revenue on which he could rely, beyond the control or neglect of the Legislature, and subject only to the remote contingency arising from a possible stagnation of business.

If we allow the matter to remain as it is, the public creditor will have much cause to complain; but if we reimpose tolls upon the railroads that are diverting and impairing the revenues of the canals, and suitably increase the tolls upon the latter, he will either receive back the revenues pledged to him, or their loss will be due to other causes than improvident legislation. At the same time the taxpayer will pay the taxes cheerfully, when he feels that he is not taxed to pay interest on the canal debt till every effort has been made to procure the required amount from the canals themselves.* [See notes 1 and 2.]

E. D. MORGAN."

March 3. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 3, 1860.

"I deem it my duty to transmit the accompanying translations of communications received from the representatives of the French government in this country, with copies of my answers thereto.

It will be seen that that government objects to the law passed April 17, 1858, (chapter 308) entitled 'An act to authorize the appointment of Commissioners to take the proof and acknowledgments of deeds and other instruments, and to administer oaths in Great Britain and France,' so far as it provides for the appointment of representatives of this State to reside in France, and founds its objections upon the principles of international law.

It is proper for me to observe, that the Chargé d'Affaires

* The Comptroller's records show that during the time the policy of collecting railroad tolls was in operation, less than five years, the State received from this source $661,682.58.

of the Emperor is mistaken, in supposing that any Commissioner has been appointed by me, to reside in France, since the receipt of the first communication, a translation of which is herewith transmitted.

E. D. MORGAN."

The following is the letter from the French Consul General:

GENERAL CONSULATE OF FRANCE:

IN THE UNITED STATES,
NEW YORK, *June* 6, 1859.

GOVERNOR.—I have communicated to the government of His Majesty, the Emperor of the French, a copy of a law passed by the Legislature of the State of New York, during the session of 1858, which creates the office of commissioner of deeds at Paris and Marseilles.

The provisions of this law have been examined with the greatest care, and I am directed by His Excellency, the Minister of Foreign Affairs, to communicate to you the grave reasons which forbid their execution in France, although the office it relates to might be of some convenience.

The law of nations does not permit the delegation, by one State, of powers or jurisdiction, to be exercised in another foreign State, except in the case of diplomatic and consular agents, and within certain limits, determined by treaties or usages. Only the Federal government has, by the State law, the right to appoint in France its diplomatic and consular agents, who perform their duties by virtue of credentials, or an exequatur, delivered to them by the Imperial government. They are generally invested only with jurisdiction where the parties voluntarily submit to it, and not where any exception to it is taken.

The law passed by the State of New York confers, however, a public and official character upon a "Commissioner of deeds," at Paris and Marseilles. In any view of it, this

law assimilates these commissioners to the diplomatic and consular agents, which the Federal government alone, and not a single State of the Union, has the right to establish in France. Moreover, the law in question gives certain attributes to these commissioners, which infringe upon the rights reserved to French tribunals. It is not for me to consider the law of April 17, 1858, in a constitutional point of view, but it may be useful to inform you that the preceding considerations, the importance of which cannot escape you, have been brought to the notice of the Federal Cabinet by the Legation of the Emperor, at Washington.

I am not aware, sir, whether these agents, created by the law referred to, have been already appointed, and while begging you to acknowledge receipt of this communication, I should be pleased to receive information upon this point. I should also be pleased to learn the result which the government of the State of New York may give to this communication.

Accept, sir, the assurances of my high consideration,

The Consul General of France

MONTHOLON.

The correspondence also includes a letter from George Bliss, Jr., Governor Morgan's private secretary, dated June 14, 1859, from which it appears that several commissioners in France had been appointed under the act of 1858, but that none had qualified or had assumed to act.

The act of 1858, chapter 308, to which the French government objected, provided for the appointment of commissioners in certain cities in Great Britain and in Paris and Marseilles in France, who were vested with authority to take proofs and acknowledgments of deeds and other written instruments, to be used in this State. The act of 1858 was amended in 1862, chapter 283, by extending its provisions to four cities in Ireland.

According to the records in the office of the Secretary of

State, Governor Morgan on the 24th of February, 1859, appointed John B. Wilbor, Jr., of Paris, a commissioner under the act of 1858. No other appointment was made in France until October 20, 1873, when John Meredith Read residing in Paris was appointed. Since that time appointments have frequently been made. The acts of 1858 and 1862 were repealed in 1875 by chapter 136, passed April 22, which extended the provisions of these acts, and authorized the Governor to appoint not more than five commissioners in each city in any foreign country.

March 7. To the Senate:

Veto of a bill entitled "An act extending the time for the collection of taxes in the several counties of this State."

"Two similar bills were presented to me last year, one of them exclusively local in its character and the other a general one, applying to the entire State. The former I returned without my approval, and in so doing, said:

'The reasons which induce me to withhold my signature from this bill, are indicated in the following passage from my annual message to the Legislature, to wit:

'It has been, for several years, the custom for certain counties to make application to the Legislature to extend the time for the collection of taxes, which applications have usually been granted. Being only partial, the operation is necessarily unequal, and ought to be discouraged and discontinued.'

'If there really exists any intrinsic difficulty in collecting the taxes within the time now prescribed by law, a general act enlarging the time should be passed, and an end be put to local and special legislation of this nature. I am not prepared to say that reasons do not exist for such a change. The time was, however, extended for a month throughout the State, except in a few cities, by a general

law passed in 1857, and still in force, and strong reasons should exist to lead to another change so soon.

'Should such a change, however, be made, the law should contain a stringent clause, forbidding the use of the moneys collected by the officers, and should provide for the more speedy payment of taxes into the treasury of the State.

'I feel confident, however, that the difficulty in collecting taxes is, in very many cases, rather accidental than necessary. Experience has shown that applications for extension of time nearly always have their origin in the neglect of duty on the part of some of the officers charged with the imposition or the collection of the taxes, or in an indisposition, rather than an inability, to pay within the time required.

'I can perceive no reason why officers should be encouraged in such neglect, by the intervention of the Legislature. They should rather be left to answer to the people, from whom they directly derive their powers. Under any circumstances, it is my deliberate intention, so far as is properly within my province, to hold every officer of every nature to a strict and careful compliance with the Constitution and the laws, without regard to the practice which may have hitherto prevailed, or to the temporary inconvenience which such a course may, perhaps at first, cause to individuals. I am fully satisfied that only by this course can regularity and economy be restored and maintained in our system of government.

'The indisposition to pay taxes within the time required by law, does not extend to the great mass of the community. Men in moderate circumstances do not, as a general thing, ask for, or avail themselves of delay. They know when the taxes are due, and are prepared to pay them punctually. But those in more prosperous circumstances, who can, if it becomes necessary, pay at any time, frequently neglect or postpone payment to the last moment, and it is for their benefit, or for that of some town or county

officer, that these applications are generally made, in those cases in which they are not caused by the neglect of duty already referred to.'

The second bill I approved, accompanying the announcement of that fact with the following statement of reasons:

'I have this day also approved the bill entitled "An act to extend the time for the collection of taxes." Although this is a general bill, extending the time equally throughout the State, I have signed it with great reluctance, and only for the reason that many of the assessors, supervisors and collectors seem to have presumed that an extension of time for collecting the taxes would be granted, as a matter of course, and have therefore allowed the legal time to expire without doing so. There cannot be the same excuse hereafter, and it is my intention to refuse my assent to any bill of similar purport that may be presented to me next year.'

The bill now returned was introduced into the Senate on the 25th ultimo, passed through all its stages on that day, sent to the Assembly the same day, and there at once passed. It has not been printed, and in neither house was it referred to any standing committee or considered in committee of the whole. Indeed, it was presented for my signature within four hours after its first introduction into the Senate. It bears upon its face the proofs of the haste with which it was drawn and passed, and, unlike all laws of a similar purport which have been enacted for many years, it does not require the collectors of taxes to pay over to the county treasurers the sums already collected by them, nor are they obliged to renew their bonds. It leaves all the money heretofore collected, which constitutes a very large proportion of the entire taxes, in the hands of the collectors to be used by them, if they choose, for their own purposes and emolument, without requiring any security for its final payment.

The objections might be remedied in another bill. But

there are, as already intimated, grave objections to any bill of this nature. The law now requires the assessors to deliver the completed rolls to the supervisors on the first of September, and they in turn must deliver the rolls to the collectors as early as the 15th day of December. The latter then have till the first day of March to make their collections, and pay over to the county treasurers. They in turn, are required to pay the amount of the State tax to the State treasurer, or to deposit it in bank subject to his draft immediately, but through a defect in the law, there is no effectual means of enforcing this requirement till the first of June.

The complaint that the taxes cannot be collected within the time allowed by law would therefore seem to be unfounded. Three and a half months are surely time enough for the supervisors to perform their duties, and ten weeks should be sufficient to enable the collectors to perform theirs. But the supervisors frequently neglect their duty in this respect, while it is the direct interest of the collectors to retain the money in their hands as long as possible, and to seek to have the time extended. In my opinion if the servants of the people would punctually perform the duties they have sworn to perform, there would be no demand for an extension.

There is however, in my opinion, another and conclusive objection to this bill and to all bills of a similar character, and that is that the supervisor of each town or ward has now the power to grant thirty days' indulgence wherever there is good cause for so doing. The law of 1823, (chapter 262, section 27,) provides expressly 'if any person chosen or appointed to the office of collector of any town or ward in this State shall refuse to serve or shall die, resign or remove out of the town or ward before he shall have entered upon or completed the duties of his said office or *shall be disabled from completing the same by reason of sickness or any other cause,* the supervisor and any two

justices of such town or ward shall forthwith appoint a collector for the remainder of the year, who shall * * * have the same powers and compensation as the collector in whose place he was appointed; and the supervisor shall forthwith give notice of such appointment to the county treasurer.' The succeeding section declares 'and upon every such appointment *the supervisor of the town or ward, if he shall think it necessary, may extend the time limited for the collection of taxes for a period not exceeding thirty days;* of which extension he shall forthwith give notice to the county treasurer.'

This law, therefore, affords all the relief needed. Time can be granted in the few localities where the public really require it, while the larger proportion of the taxes, amounting probably to nine-tenths of the whole, will be promptly paid over by the collectors."

The bill was not passed over the veto.

March 10. To the Assembly: Transmitting the report of the Sailors' Snug Harbor, and the annual report of the Adjutant General.

March 21. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to create a fund in aid of the Society for the Reformation of Juvenile Delinquents in the city of New York, and for other purposes.'"

"As it is an amendment of an existing law, it is not in strictness open to an objection founded on the provision of the Constitution requiring that no private or local bill 'shall embrace more than one subject, and that shall be expressed in the title.'[1] But it is obvious that the title wholly fails to convey any idea of the contents or actual purposes of the bill, and I have reason to believe that it was in consequence of this that it was allowed to pass without

[1] Const. 1846, art. 3, § 16.

discussion, so that its true character and object were only discovered after its final passage through both houses.

Its main purpose seems to be to provide for the better observance of Sunday in the city of New York, by preventing the secular exhibitions and performances which, under manifold guises, now prevail in that city on that day. A bill to effect this object would receive my approval, but the one under consideration goes much farther, and imposes unnecessary and unjust restrictions upon innocent amusements upon the other days of the week. In addition to the section forbidding amusements on Sunday, it provides that 'it shall not be lawful to exhibit to the public in any building, garden, grounds, concert room, or other room or place within the city and county of New York, any interlude, tragedy, comedy, opera, ballet, play, farce, concert, negro minstrelsy, negro, or other dancing, or any other entertainment of the stage, or any part or parts therein, or any musical, equestrian, circus or dramatic performance, or any performance of jugglers, acrobats or rope dancing,' unless a license has been first obtained from the mayor of New York. Five hundred dollars per annum must be paid for every such license. The result of this provision would be to close many innocent and beneficial places of amusement whose profits are not sufficiently large to enable them to pay this sum.

There seems to be a manifest injustice in obliging the proprietors of all places of amusement to pay a uniform fee of five hundred dollars a year without reference to their size or object. True policy requires that the number and variety of places of innocent week day amusement should be increased rather than restricted.

If it is necessary to require all exhibitions and performances to be licensed, the license fee should in some cases be a moderate one, and in all should be graduated according to circumstances, and imposed not with reference to revenue, but with a view to the exercise of proper control over them.

Believing that this bill was passed without its purposes being properly understood, and that its provisions are so sweeping as to defeat the objects of its framers, I deem it my duty to return it to your body, in which it originated, for reconsideration."

The bill was not passed over the veto.

March 23. To the Assembly:

Veto of a bill entitled "An act authorizing the Board of Supervisors of the County of New York to levy a tax for county purposes, and to regulate the expenditure thereof, and also to borrow money in anticipation of the collection of said taxes, and to issue county revenue bonds therefor."[24]

"The county of New York alone of all the counties in the State comes to the Legislature annually, and on the recommendations of its board of supervisors, obtains authority to levy and collect taxes for county purposes, and to regulate the expenditure of the proceeds.

The present year the board of supervisors, in preparing their proposed levy, expressly refused to ask for any new authority to raise the amount claimed by the commissioners of records to pay for indices, grounding their refusal on doubts as to the validity and justice of the contracts made by the commissioners in printing such indices, and on the fact that the act of April 13, 1855, gave them full power to provide the necessary sum when the validity and justice of the contract should be established by the courts. An application was thereupon made by the contractors to one of the justices of the Supreme Court in the first judicial district, for a mandamus to compel the board of supervisors to insert in the levy the amount called for by the contract. After argument the mandamus was refused; no decision

[24] The New York tax bill was not passed over the veto, but another act on the same subject was passed, and became a law, chapter 509, on the 17th of April. The act was sustained in Devlin v. New York (1875), 63 N. Y. 8.

being had, however, as to the validity of the contract an appeal was taken to the general term of the Supreme Court before which the matter is now pending, the supervisors denying the validity of the contract, and the legal existence of the commissioners of records.*

The Legislature, however, have passed an act entitled 'An act authorizing the board of supervisors of the county of New York to levy a tax for county purposes, and to regulate the expenditure thereof, and also to borrow money in anticipation of the collection of said tax, and to issue county revenue bonds therefor,' in which, contrary to the wishes of the board of supervisors, there has been inserted the following clause: 'And also a further sum for the commissioners of records to pay existing liabilities, and for completing the contract for the indices of grantors and grantees of conveyances in the office of the register, $193,821, said sum to be paid by the county treasurer, upon the order or certificate of the said commissioners.' This language seems to recognize and imply the existence of a valid contract, to overrule the action of the local authorities, and to anticipate the final decision of the courts in a matter now pending before them, which I cannot suppose to have been the intention of the Legislature. Nearly $700,000 having already been expended by the Commissioners of records, and the prices called for by the contract being admittedly exorbitant, there should be no doubt of the impropriety of imposing any further burthen upon the county of New York in opposition to the wishes of the local authorities, unless required by the terms of contracts valid beyond dispute. Should the contract in this case be sustained by the courts, the supervisors have power to raise

* See People ex rel. McSpedon v. Supervisors of New York (1861), 21 How. Pr. 288, affirming 10 Abb. Pr. 233, denying a writ of mandamus against the supervisors; but see also People ex rel. McSpedon v. Comptroller of the City of New York (1861), 34 Barb. 69, sustaining mandamus against the City Comptroller, based on L. 1860, chap. 509.

the money under the law which created the commissioners of records, and can, doubtless, be compelled to exercise it.

Being unwilling to sanction that portion of the bill which impliedly recognizes the existence of a contract binding the county to the amount of $193,821, I return it to the Assembly without my signature, for reconsideration as to that part of it."

March 31. To the Senate:

"ALBANY, *March* 31, 1860.

"I transmit herewith a communication from the Commissioners of Pilots of the Port of New York, asking to be relieved from the duties imposed upon them by the law of 1857 [chapter 243].

While I consider it will be detrimental to the State as well as to the city to lose the services of the Commissioners of Pilots, I cannot but feel that they are right in asking to be relieved from the responsibility of duties which in their opinion they cannot properly perform under the existing law.

E. D. MORGAN."

The Pilot Commissioners stated that the harbor line to be overlooked was seventy-five miles in extent. They further said the law was defective in many points, and that they had asked in vain for its amendment. They, therefore, requested the repeal of so much of the law as imposed on them the duty of administering it.

April 9. To the Assembly:

Veto of a bill entitled "An act to erect a new county from the third Assembly district of Steuben, to be called Canisteo."

"Doubts having been suggested to me as to its constitutionality, I submitted the question to the Attorney General, stating to that officer the admitted facts that the representative population of the district proposed to be

comprised in the new county was, in 1855, only about twenty thousand, while the ratio of representation throughout the State, was about twenty-two thousand, and that the county of Steuben obtained its third member as one of the counties having the largest fraction. That officer, by a course of reasoning which carries conviction to my mind, and which must, I think, satisfy the members of the Legislature, arrives at the conclusion that the bill is unconstitutional. The provisions of the Constitution bearing upon the question are to be found in the third article of that instrument.[1] It is provided that the Assembly shall consist of one hundred and twenty-eight members, and that they shall be apportioned among the several counties by the Legislature 'as nearly as may be, according to the number of their respective inhabitants,' and shall be chosen by single districts. It is further provided that, in counties entitled to more than one member, the supervisors shall divide their county into as many districts as they are entitled to members, and shall file a description of the several districts, 'specifying the number of each district and the population thereof, according to the last preceding State enumeration as near as can be ascertained.' Each Assembly district must 'contain, as nearly as may be, an equal number of inhabitants,' and must 'consist of convenient and contiguous territory;' but no town can be divided in the formation of districts. The same section provides: 'Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member, and no new county shall be hereafter erected, 'unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member.'

The question as to the constitutionality of the act under

[1] Const. 1846, art. 3, §§ 2, 5.

consideration seems to depend, therefore, upon the true meaning of the restriction that 'no new county shall hereafter be erected, unless its population shall entitle it to a member.' To decide this question we must, in the language of the Attorney General, 'ascertain, if possible, first, whether the proposed county is required to have been entitled to a member upon the basis of the last preceding enumeration, or at the time it is erected into a county.

'Second, whether it is required to have a population equal to one one-hundred and twenty-eighth of the population of the State, or only a population actually represented under the distribution of members authorized by the above constitutional provisions.

'It would seem from the entire scope of the third article that the object of the Constitution was to secure, as nearly as practicable, equality of representation, and that the above restriction was adopted to promote that end. The words of the present Constitution are in this respect identical with those of the Constitution adopted in 1822, and under that Constitution a statute was passed as follows: 'No change can be made that shall have the effect of reducing the number of inhabitants of any such county according to the last State Census below the number required to entitle it to a member of Assembly according to the existing ratio or representation. No new county can be erected unless its population, according to the returns of the last State census, shall entitle it to a member.'

'The requirement that the supervisors shall file a description specifying the number of the district and the population thereof, according to the last preceding enumeration, as near as can be ascertained, when considered in connection with the then existing and still unrepealed statutes, indicates pretty strongly the intent of the Constitution.'

I am unable to see any purpose in requiring the supervisors to specify the population of an Assembly district,

according to the last preceding census, unless to form a guide to legislative action in this very respect. Besides, this is the only criterion of population provided by the Constitution; no other official information or manner of ascertaining population is provided except these periodical enumerations; and representation throughout the State (unless new counties are an exception) is based by the Constitution, and remains unaltered upon the last enumeration, until a new one is made under the constitutional authority. It is not to be presumed that the population of counties to be erected, was intended to be placed on a more favorable basis than Hamilton, already erected, which is thereby required to elect with Fulton, until its population shall, 'according to the ratio,' be entitled to a member. If it were so, we should be led to the anomalous conclusion that it was the intent of the framers of the Constitution that Hamilton county should not have a member until its population was equal to the ratio of representation throughout the State, while new counties could be formed with a representative population less by one third to one half. In other words, while Hamilton county to-day must have a population of over twenty-two thousand to entitle it to a member, the second Assembly district of Livingston county, with a population of sixteen thousand eight hundred, could be erected into a county.

If, however, it is the population at the time the county is erected which is to govern, it would not be sufficient simply to ascertain the population of the district so to be erected, in order to determine whether its population is at 'that time' entitled to a member. The population of the whole State, 'at that time' would have to be ascertained before that question could be determined.

It would not be equitable to base the ratio of all the rest of the State on the last preceding enumeration, and disregard its increase, while the district to be made a county would have the benefit of its increase since the last enu-

meration, and though means might perhaps be readily devised to satisfy the Legislature that the population of the proposed new county had increased since the last preceding census, it would be impossible, without an actual census of the whole State, to ascertain that it had more than kept pace with the general increase of the State. It seems to me, therefore, that we are inevitably led to the conclusion that the theory and spirit of the Constitution requires that the proposed new county should have been entitled to a member of Assembly upon the basis of the last preceding census.

'The second question involved is, Is the population required to be equal to one one-hundred and twenty-eighth of the population of the State, or only a population represented under the distribution of members actually made?

'The object of the Constitution was to produce the nearest practicable approach to equality of representation. Counties already organized were each entitled to one member (except Hamilton) and the "members of Assembly shall be apportioned among the several counties of this State by the Legislature, as nearly as may be, according to the number of their respective inhabitants." This would not produce entire equality, but the nearest practicable approach to it.

'When, as in the case of the county of Steuben, in distributing the members, a member was awarded upon a fraction of population less than the ratio, and the supervisors of Steuben came to divide their county into three districts, they again were to act on the same principle, to divide equally, as near as may be, but so as to have each district convenient and contiguous and not to divide any town. These rules would necessarily produce some inequality in the Assembly districts, and one or more of these districts must have a representative population less than the requisite number in the remainder of the State; but this inequality might and probably would at the next

apportionment be corrected, perhaps reversed, while the district was comprised in the original county. If now erected into a new county it must always have a member, and the inequality becomes permanent, and the population of some other part of the State equal to the deficiency in this district becomes disfranchised.'

The erection of the county of Canisteo, and of that of Conhocton, for which purpose a bill is now before me, would constitute three counties, having respectively from eighteen hundred to thirty-two hundred less population than the present ratio throughout the State, and each entitled to a member for all time to come, though the general ratio of representation must largely increase with each successive census.

Moreover the provision of the Constitution of 1846, as to the erection of new counties, was, as I have said, an exact transcript from the Constitution of 1821.[k] There were, however, no such divisions as Assembly districts known to the Constitution of 1821, so that under that instrument it is clear that no new county could be erected without having the full population to entitle it to a member, and the same language in the Constitution of 1846 must mean the same thing.

The result necessarily follows and constrains me to conclude that the intent of the Constitution was not that the action of the supervisor of a county in establishing Assembly districts, should have the effect to determine conclusively that the population of such district is entitled to a member as a separate and independent county. In other words, the fact that the territory proposed to be erected into a new county, is an Assembly district, is a compliance with one of the requirements of the Constitution, but has no bearing upon the other question of sufficiency of population.

It has, however, been urged upon me that the Court of

[k] Const. 1821, art. 1, § 7; 1846, art. 3, § 5.

Appeals, in the Schuyler county case, decided that the courts could not review the action of the law-making power, in deciding that a new county has the requisite constitutional population.* If this is so, it seems to me only to impose the necessity of still greater care on the part of all branches of the law-making power to prevent a violation of the fundamental principle of a government, that of equality of representation. If the decision of the law-making power is in this respect final, there should be no doubt in the mind of any portion of that power that any proposed new county at the time of its erection possesses a population equal to the ratio of representation through the State; and I can perceive no reason to suppose that the third Assembly district of Steuben county has so increased in population since 1855, as to contain one one-hundred and twenty-eighth part of the population of the State, either as it was in 1855, or as it is now. These considerations are conclusive and prevent me from approving the bill.

The conclusion to which I have been led from a consideration of the Constitution, is confirmed by an examination of the past history of the State. In 1846, the opinion of the then Attorney General, Hon. John Van Buren, was asked by the Assembly on the same provision of the Constitution of 1821. He replied at some length, and concluded: 'It seems to the undersigned that this prohibition can only be made effectual by holding that it not only forbids the Legislature from erecting a new county with less than the ratio of population, entitling it to a member of Assembly, but that it also forbids them afterwards to reduce this population below the ratio by the formation of a new county.'

In 1851 and 1852, a similar question was before the Assembly, and was considered by committees of that body. In 1851, they briefly reported against the erection of a new county on the ground of a deficiency in population. In 1852, they made an able report, in discussing the question

*See Lanning v. Carpenter (1859), 20 N. Y. 447.

and came to the conclusion: 'In short, a district or territory, the representative population of which is not equal to one one-hundred and twenty-eighth part of the representative population of the whole State, has not sufficient population to entitle it to a member and cannot be erected into a county without a violation of the Constitution.'

In 1856, in a reply to a resolution of the Assembly, the Attorney General said: 'The present Legislature cannot constitutionally erect a county having less than the full ratio of representative population under the census of 1855.'

But even if these considerations only raised a doubt, great caution should be exercised in enacting such a law, in view of the inconvenience and prolonged litigation which arose in the similar case of Schuyler county. Moreover, the interests of the State are directly involved, for the fourteenth section of the bill requires the Comptroller to loan to the supervisors of the new county, on the credit of the county, 'from any funds under his control belonging to the Common School Fund,' 'such sum of money, not exceeding fifteen thousand dollars, as said board shall require.' If the constitutional existence of the county should, as I believe it would become involved in litigation, it might result in a loss of the sum loaned, and a consequent infraction of the 9th article of the Constitution which requires that the capital of the Common School Fund shall be preserved inviolate.

I have examined this bill with the desire to give it my approval, for I know that the county of Steuben is inconveniently large, and that the interests of its inhabitants require that it should be divided. But after the next enumeration it can be done in a manner far more satisfactory to the people than is, in any view of the matter, possible at present."

The bill was not passed over the veto.

April 12. To the Assembly:

Veto of a bill entitled "An act to incorporate the Minstrel Fund Association."

My reasons for disapproving this bill " are substantially contained in a communication sent to the Senate last year. I then said: The Constitution (article 8, section 1,) provides that ' corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.'

The reasons which led to this provision, and the evils it sought to prevent, were well stated by Governor Hunt, in a communication to the Legislature, in the year 1852:

' The limitations imposed by the Constitution upon the Legislative power in respect to the creation of bodies corporate, by special charters, were the result of wise deliberation, and were intended for salutary ends. Among other important considerations which induced the Convention to prescribe general laws, it was deemed desirable to discontinue the practice of creating a multiplicity of corporations by partial and unequal enactments infinitely varying in character, according to the peculiar views of applicants for special immunities. Another object sought to be accomplished by the change of policy introduced by the new Constitution was the relief of the Legislature from the constant and numerous applications for charters, which experience had shown to be unfavorable to wise and matured legislation on subjects of common concern, involving the more general interests of the community.

' Notwithstanding the adoption of general laws to facilitate the formation of corporations for charitable, benevolent, religious, missionary, scientific, and literary objects, for banking, for roads, bridges, manufactures, and other purposes connected with the material and social progress of the State, numerous applications continue to be made

to the Legislature at every session for special franchises to allow the objects which have been so fully provided for by liberal enactments, framed in accordance with the spirit and design of the Constitution. A growing tendency to yield to solicitations of this character, and to grant particular acts for the attainment of purposes already provided for by general laws, is but too apparent. It becomes our imperative duty to recur to the principles so carefully established by the organic law, and to adhere to them with watchful fidelity.'

What then, is the meaning and extent of the Constitutional provision already quoted?

Several of the Governors have taken the ground that it renders unconstitutional all special acts of incorporation for purposes already provided for by general laws. Thus Governor Fish, in 1850, in returning a bill to the Legislature said: 'In the absence of any general law authorizing the formation of corporations for any particular object, the enactment of a special act incorporating a company for such object, may perhaps, in some cases be assumed as an indication of the opinion of the Legislature that in its judgment these objects cannot be obtained under general laws. But the enactment of the general law, above referred to, establishes that the objects of corporations of the character of that whose charter the bill before me proposes to extend, are such as can, in the judgment of the Legislature, be attained under general laws. Hence it follows clearly that the Legislature has not the power to create by a special act a corporation for these objects.'

The principles here enunciated seem to me sound, and have been accepted as such. Indeed, any other doctrine would render the constitutional prohibition nugatory.

The general principles, therefore, which must guide me in considering special bills relating to corporations other than those for municipal purposes, are involved in the question whether there is a general law providing for the same

general objects. If there is, special laws are, in my opinion, unconstitutional, and I cannot give to them my approval.

As the purposes desired by the friends of the 'Act to incorporate the Minstrel Fund Association' can all be accomplished under the broad and comprehensive provisions of the 'Act for the incorporation of benevolent, charitable, scientific, and missionary societies,' passed in 1848, I return the bill without my signature."

The bill was not passed over the veto.

April 13. To the Senate:

Veto of a bill entitled "An act to confirm certain assessments made by the directors of the Delaware and Susquehanna Plank Road Company upon the amount subscribed to the capital thereof for the payment of the debts against said company."

"It seems from the papers accompanying the bill, that the company built a road at a cost of thirty thousand dollars, when they had available means to the extent of only about eighteen thousand dollars. For the balance, a debt was incurred for money borrowed on a mortgage of the road and the personal security of the directors. The income of the road proved insufficient to provide for the debt, and the stockholders then, by successive votes, laid assessments of seventy-five per cent. upon the stockholders. The bill declares these assessments legal and binding and allows the directors to collect them of the persons who were stockholders, either at the time the debt was contracted, or at the time the assessments were voted, as they in each instance deem best. In brief, the bill proposes to compel stockholders who subscribed to the capital stock of a company, and who have paid for it in full, to pay seventy-five per cent. more.

In a message to the Assembly, in March, 1859, accompanying a somewhat similar bill, I said, 'In other words, the stockholders are to be compelled to increase their subscrip-

tions. Having subscribed and paid for their stock at a certain par value, they are to be compelled to pay a certain percentage additional. I am not informed whether there would be in this particular case any objection on the part of any of the stockholders, but I presume that there would be, for if the consent of all could be obtained the intervention of the Legislature would not be needed or sought. If there would be any such objection, even on the part of a single stockholder, the Legislature certainly ought not, even if it has the power, to seek to compel such further payment. It will readily be perceived that there may be instances in which holders of stock would fail to pay the assessment merely from inability. This would be the case especially with those in moderate circumstances, and those who hold stock in trust. Yet if this bill becomes a law they may be at once deprived of their stock without any fault on their part, and after they have paid all that they bound themselves to pay.

'This objection obviously involves an important principle, reaching far beyond the interests affected by this particular bill. If such a provision is right in the case of the Sennett and Auburn Plank road company, it is equally right in the case not only of every other plank road company, but in that of every corporation in the State.

'Believing that the provision referred to is opposed to every principle of justice and good faith, I feel confident that when the attention of the members of the Legislature is distinctly called to it they will see the propriety of reconsidering their action.'

All these objections apply to the bill herewith returned, with the additional ones that the mode of enforcing payment is not the forfeiture of perhaps valueless stock, but by suit for the recovery of the money, and that the directors are given a discretion as to enforcing the assessments, a discretion not merely whether all those who were stockholders at one time or at another time shall pay, but dis-

cretion to hold one man who was unfortunate enough to own stock at the time the debt was contracted and to release another who held stock at the same time.

I recognize fully the unfortunate position in which the directors are placed, and the moral duty resting upon the stockholders to share with them the burden assumed for the common benefit, but this is no ground for so great a violation of principle as is proposed."

The bill was not passed over the veto.

April 13. To the Senate:

Veto of a bill entitled "An act to authorize the sale of certain lands belonging to the State, and to impower the corporation of the City of New York to purchase the same." [25]

"The bill provides that the State Engineer and Surveyor, shall cause to be surveyed, all the lands belonging to the State on the Hudson and East Rivers, outside of the grants heretofore made to the city of New York.

After the survey is completed, the municipal authorities of that city are to have the option of purchasing the lands at a price to be fixed by the Commissioners of the Land Office. If the bill stopped here it would have met my approval, though in my opinion it would have been better to have provided for a sale at auction to the highest bidder. But the bill goes on to provide that 'it shall be the duty of the comptroller of the city of New York and he is hereby authorized and directed to purchase and acquire, in the name and for the benefit of the corporation of said city, any title, claim, or interest, which any person or persons may have as grantee or grantees, lessee, or lessees of the State, in or to any of the lands surveyed as in this act provided; and also to compromise, settle and pay off, upon such terms as he shall deem most advantageous to the cor-

[25] The bill authorizing the sale of certain State lands was passed over the veto, and became a law, chapter 516, on the 17th of April.

poration of said city, any and all claims, rights of action, and demands of every description, which any person or persons, or his or their heirs, executors, administrators or assigns, now have or may, or can have, against the mayor, aldermen and commonalty of said city, arising from or growing out of the use or occupation of said lands or any part thereof, by the corporation of said city, its grantees or lessees.'

If this provision is to be interpreted literally it would compel the comptroller to extinguish claims upon lands which the city had refused to purchase, and which therefore remain the property of the State, for this duty is imposed upon the comptroller as to all lands surveyed, not simply all lands purchased.

It compels the comptroller of the city to purchase a lease, the validity of which he, in connection with the corporation counsel, is at the present moment contesting in the courts, and to extinguish judgments to the amount of over six hundred thousand dollars, the justice of which the comptroller is taking measures to dispute. Even if this obligation is intended to be conditional upon the purchase of the lands, the result may be to compel the city to pay judgments which its authorities have represented to me to be fraudulent and unjust, in order to enable the city to purchase lands it desires to obtain.

If the judgments are valid the city is abundantly responsible, and will be compelled by the courts to pay them, and there is no reason why the Legislature should attempt to anticipate the action of the proper tribunals.

Indeed, if the judgments had not been obtained for the occupation of a portion of the lands to be conveyed, no one would have thought of inserting such a provision into this bill. A moment's reflection will, however, show that this fact makes no difference as to the propriety of the provision. The judgments are against the city, not against the State, and they are, consequently, not a lien upon the

land. If the city is willing to purchase the land it should have the permission to do so untrammeled by the obligation to pay judgments it is contesting. This course involves no injustice to the plaintiffs in the judgments. It leaves them where they are. They have the responsibility of the city, and they should have no more.

The tribunals of justice will, in due time, enforce the collection of the judgments, if they are right. Meanwhile the action of the authorities of the State and city, respectively, should remain uninfluenced by extraneous matters.

I must not be understood as expressing any opinion as to the rights of the State in the lands affected by this bill. They are of such a nature that responsible persons are prepared to purchase them, and the Commissioners of the Land Office have full power to sell them. So far as the State is concerned there is no possibility that her pecuniary interests can be injured by the failure of this bill to become a law, while the authorities of the city of New York protest that it is unjust to that city.

The law officer of the city, Hon. Greene C. Bronson, in a communication addressed to me since the passage of the bill, says:

'The bill in question presents a case of legislation which is believed to be without precedent in the history of any free people.

'Judgments have been recovered against the city for nearly six hundred thousand dollars. In two of the three cases appeals are regularly pending to review the judgments, and measures are in progress to set them all aside on the ground of collusion and fraud. In this state of things, when the city is seeking to vindicate its rights through the action of the judiciary, the legislature steps in and declares, in effect, that the city shall have no review, arrests the ordinary course of justice, and directs the payment of the judgments. If such a thing can be done without violating the fundamental principles of government, it is

not too much to say that the Constitution in its present form is not worth preserving. I must not be understood as imputing improper motives to the members of the Legislature. They have undoubtedly acted upon erroneous information.'

April 16. To the Assembly:

Veto of the following bills:

"An act to authorize the construction of a railroad in avenue D, East Broadway, and other streets and avenues of the city of New York."

"An act to authorize the construction of a railroad track on South West, and certain other streets in the city of New York."

"An act to authorize the construction of a railroad in Seventh avenue, and in certain other streets and avenues of the city of New York."

"An act to authorize the construction of a railroad in Tenth avenue, Forty-second street, and certain other avenues and streets of the city of New York."

"An act to authorize the construction of a railroad in Fourteenth street, and in other streets and avenues of the city of New York."

"No person appreciates, more fully than myself, the utility of railroads, as a medium of communication between distant sections of a great city. In the conviction that greater facilities in this respect were required in New York, I took occasion, in my annual message, to advert to this necessity, and to recommend 'that the number of railroads in the upper part of the city be increased,' and took occasion in this connection to add, 'in doing this, however, care should be taken, while limiting and equalizing the rates of fare on all railroads in that city, to render the valuable franchise a source of income to the city.' It was obvious, therefore, to the Legislature, from these declarations that

all which was necessary to secure my approval of the additional railroad facilities, required by the interests of the citizens of New York, was, that the grants for this purpose which might be made, should impose suitable conditions, in view of the valuable franchises granted; should guard against the abuse of the privileges conferred, and should require the services to be performed at the least cost to the public, consistent with the obligations imposed.

It is because the bills before me, fail to embody these essential provisions, and are deficient in other respects, of those safeguards which I deem necessary to the protection of the public interests, that I am constrained to withhold my signature from the bills herewith returned.

That the privileges proposed to be conferred in these acts are deemed of great pecuniary value, needs no other elucidation than the facts that responsible individuals stand ready to pay a large bonus into the treasury of the city of New York, for the franchises conferred upon the persons named in these bills, without cost or equivalent.

I deemed some return to the city, in this respect, simply equitable because the streets have been opened, graded and rendered ready for the reception of the rails proposed to be laid down, at the expense of the property holders; and that a suitable payment into the city treasury would to that extent alleviate the burden of taxation which presses so heavily upon its citizens. Or, if this method were deemed objectionable, it would have contented me, had the bills in question so reduced the fares, for the transportation of passengers, as to have proved a veritable benefit to the humbler classes of citizens, who are driven far from the centers of business, by the high rents prevalent, in the more accessible districts of the city. In this respect also, the bills before me fail to conform to the intimations contained in my annual message. Whilst it is notorious that the profits of the existing railroads in the city of New York, are vastly disproportioned to the amount of capital actually invested,

the roads now proposed are allowed to conform to the prices for the transportation of passengers charged by those already in operation, without any other restriction or reduction.

Again, the bills to which I am constrained to interpose my objections, are grants of power in perpetuity.

Ordinary prudence would suggest that this should be avoided. Powers that are useful to-day, under the changing circumstances of communities, and of municipal operations, may, a few years hence, become objectionable. Hence it is that the exclusive benefits of patents are limited, the existence of corporations circumscribed within certain periods, ferry franchises defined and restricted. The whole genius of our government requires that privileges granted, especially those of pecuniary value, or affecting the public convenience, shall, after a certain time cease, and the power of revision and amendment be exercised in accordance with the requirements of public interest.

But the privileges conferred in these acts, authorizing in some cases the entire engrossment of streets, are without limitation; and if at any future time the use of these public avenues should be demanded for other purposes, there is no determinate period to which the inhabitants, or corporate authorities, could look for a cessation of the privileges now granted. Nor is there any power reserved, on the part of the Legislature, to alter, modify or repeal these grants, however flagrant shall be the abuses which may grow up under them. Nor is there any provision in these bills prescribing a time within which the proposed railroads shall be constructed. Secure in the privileges conferred, the parties in interest may delay action to such time as their own convenience shall be best subserved. In the meantime the immunities granted may be the subject of constant barter and sale, without the slightest accruing advantage to the public. Equally deficient are they in requirements as to the time and manner the cars shall run,

or the distance to which a car, when started, shall proceed. Running in zigzag directions, it is in the power of the several companies to break their connections at short intervals, and thus, instead of carrying a passenger the whole distance he may wish to proceed, compel him to pay two or more fares before reaching the desired point.

An objection more flagrant than any to which I have adverted, is the utter want of responsibility which pertains to these associations. They are not required to file any articles of association, and within a month after organization, the public may be entirely at a loss to know who are the parties in interest. Being without a corporate name, and without corporate responsibility, prosecutions could only be maintained against individuals, and these, with no accessible public record to exhibit their names, residence or interests, might prove altogether intangible. And as if this immunity were not sufficient, the bills before me, violating all just precedent, provide that suits for damage or demand, be brought exclusively in the courts of the first judicial district. Thus, whilst the persons upon whom the privileges are conferred in these acts, are residents of various sections of the State, litigants are compelled to resort for redress to the city of New York, no matter what may be the circumstances of the case, or how onerous the burden thus imposed. That this is a flagrant departure from the principles and practice which govern ordinary legal controversies cannot be questioned.

I have thus briefly stated my objections to these measures, drawn from the inherent defects manifest in the bills themselves. They are, in my judgment, of so grave a character, and so clearly calculated to destroy the utility of the measures proposed, that I cannot consent to become a party to their enactment. Sincerely do I deprecate the want of additional railroad facilities in the city, with whose interests, social, civil and commercial, I have long been connected.

But I cannot consent to the sacrifice of permanent interests for temporary advantages. The measures thus objected to, are, in their present shape, at variance with justice and sound policy, not in consonance with the wishes or wants of the great mass of those for whose benefit they are professedly designed, and being deficient in those legislative safeguards which should mark wise and discriminative legislation, my only alternative lies in the exercise of my constitutional prerogative, and I therefore return them severally, without my signature."*

April 17. To the Assembly: Transmitting the annual report of the Inspector General.

April 17. To the Senate:

Veto of a bill entitled "An act to facilitate the construction of the Albany and Susquehanna Railroad." [See note 21.]

"A bill originating in the Assembly of last year, with a similar title, was in like manner presented to me, from which I was constrained by considerations of public duty to withhold my assent. Among those considerations were some of a fundamental character, which could not, under any circumstances, be disregarded, while there were others of a nature, to be affected by circumstances, such as the condition of the treasury, the claims upon the public regard of the localities favoring the proposed enactment, and the expediency of reviving the policy of appropriating the public moneys to purposes of local improvement.

With a due sense of the responsibility of the position in which the people of the commonwealth have placed me, and with, I am sure, a sincere desire to avoid the abuse of the

* See *ante*, p. 189. The foregoing bills were passed over the veto, and became respectively, in the order stated in the veto message, chapters 512, 511, 513, 515, and 514. Chap. 513 was sustained in People v. New York (1861), 20 How. Pr. 144; People v. Kerr (1863), 27 N. Y. 188; Sixth Ave. R. Co. v. Kerr (1878), 72 N. Y. 330.

power with which I have been invested by the organic law, I was not disposed to insist upon the infallibility of my own judgment with reference to the objections urged by me against the bill of last year, and especially when my action conflicted with the action of a co-ordinate and respected branch of the government, and therefore, since I had substantial reasons for believing that an application would be pressed upon the present Legislature for aid to the Albany and Susquehanna railroad, and that this application would be supported by urgent and earnest petitions from the localities interested, I thought it not inappropriate to refer to the subject in my last annual message, and to suggest some of the provisions which I deemed indispensable to my approval of any measure appropriating money 'to facilitate the construction of the Albany and Susquehanna railroad.' That portion of the message relating to this matter is as follows:

'Towards the close of the last session of the Legislature I felt it to be my duty to return with my objections, a bill "to facilitate the construction of the Albany and Susquehanna railroad," which bill made an appropriation of two hundred thousand dollars from the treasury. The Legislature was induced to grant that aid, it is presumed, in consideration of the fact that the section of the State through which that road is to run, is isolated, and has not directly participated in the liberal expenditures for improvements, by means of which other portions of the State have been so largely benefited. The reasons which led me to withhold my approval from the bill were conclusive to my mind, and under similar circumstances would lead to the same action. This measure has been presented to the people, accompanied by my objections, and may return for reconsideration. It may be proper, therefore, in this changed aspect of the question, to say at this time, that if the immediate representatives of the people, chosen as the entire Legislature has been since my objections were made

public, deem the aid of the State due to a sequestered section, and think proper to pass *by a constitutional vote,* a bill for that object, providing therein, by tax or otherwise *the money to pay whatever appropriation is made,* I shall yield my own opinion to the will of the people thus expressed.' *

Having thus submitted my own action on this subject to the criticism and revision of the Legislature, clearly indicating, at the same time, what action on its part would be deemed essential to secure my approval, I could not, without a betrayal of the important trust confided to me, sanction a bill more objectionable, in some respects, than the bill of last year, and obnoxious to the charge of violating the Constitution.

The first section of the bill under consideration, proposes to impose a tax of *one-fourth* of a mill, *for one year*, upon each dollar of the valuation of the real and personal property of this State, to be assessed, levied, collected, &c., &c.

This tax, for one year, would realize a little over three hundred and fifty thousand dollars, and this is the only provision made by the bill to meet the appropriations of the following section.

The second section proposes to appropriate, when satisfactory proof is furnished the Comptroller that one million of dollars have been expended in the construction and equipment of the road, and the same has been put in operation thirty miles from Albany, *three hundred thousand dollars;* when like proof is furnished that another thirty miles of the road are constructed, *the further sum of two hundred thousand dollars;* and again, when like proof is furnished that still another thirty miles of the road are constructed, *another sum of two hundred thousand dollars;* and when similar proof is furnished that the road is completed and put in operation to Binghamton, *' the balance of the moneys raised for the purposes aforesaid.'*

* See *ante*, p. 194

Here are *seven hundred thousand dollars specifically appropriated,* to say nothing of the rather obscure appropriation in the event of the road being completed and put in operation to Binghamton; and yet the bill only imposes a tax of three hundred and fifty thousand dollars to meet these appropriations, leaving three hundred and fifty thousand dollars to be raised in some other manner, and at some indefinite period.

Under the provisions of this bill the company for whose benefit it is designed could go into the market and borrow the full sum appropriated, on the faith and credit of its ultimate repayment by the State. It must be borne in mind, in this connection, that all State indebtedness results from legislative enactment; and that certificates of stock are but mere negotiable evidences of debt, relying for their vitality upon the previous action of the Legislature. To the extent of the appropriation not specifically provided for by the tax imposed, this bill pledges the faith of the State to this corporation, and is therefore in direct contravention of section nine, article seven, of the Constitution, which declares ' the credit of the State shall not *in any manner* be given or loaned to, or in aid of any individual, association, or corporation.'

Again this bill, like the bill of last year, comes to me with the certificate of the presiding officers of both branches of the Legislature, that it was passed by the concurrence of a majority only of the members elected to each House.

Section 9, of article 1, of the Constitution, declares:

' The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.'

I am unable now, as I was on a former occasion, by any process of reasoning satisfactory to my own mind, to arrive at any other conclusion than that the provisions of this bill bring it within the requirement of the Constitution, here

quoted. That a corporation created with a view to personal profit, whose property and franchises are owned and controlled by individuals, not chosen by the people nor directly responsible to them, with which the State at large has no connection, and from the receipts of which it can derive no advantage, can be considered otherwise than *private,* within the constitutional sense of that term, (whatever may be the scope and influence of the right of eminent domain,) I am at a loss to determine. It is true, the section of the country through which it is to pass, will receive the benefits from its construction through the facilities which it will furnish for the transportation of persons and property; but these incidental advantages to the public can no more take a railroad company from the reach and influence of the constitutional provision, to which I have alluded, than they would other corporations, from the operation of which similar benefits to the public are daily resulting.

Believing then, that the bill does not remove the fundamental and insuperable obstacles to my approval of the bill of last year; that it does not make full provision for the payment of the amount which it appropriates; that it creates a demand upon the treasury which, without such provision, must result in dishonor to the State; and finally, that it lacks the constitutional vote essential to its vitality, I herewith return it to the Senate, in which it originated, with these, my objections."

The bill was not passed over the veto.

April 17. To the Senate:

Veto of a bill entitled "An act to legalize certain proceedings of the mayor, aldermen and commonalty of the city of New York."

"The bill is avowedly intended to overrule the decision of the highest judicial tribunal in the State. From the

papers accompanying the bill, and from other sources, I learn that the bill is for the benefit of James B. Brady, who claims to have suffered loss from a contract made by him with the street commissioner of the city of New York.

It appears that the common council ordered a contract made to set the curb and gutter, and flag a portion of Eighty-third street. Before entering into the contract it was the duty of the surveyor to examine the ground and make an approximate estimate of the amount and kind of work to be done, on which estimate proposals were to be invited. The surveyor estimated the various kinds of work, but in violation of his duty, omitted all reference to rock excavation.

The advertisement, however, invited bids for ' removing rock, if any should be found.' Mr. Brady made a low bid upon the items specified in the surveyor's estimate, but for rock excavation he bid the sum of twenty-five dollars per yard. The proposal of only one of the other bidders made any mention of rock, and he bid five dollars per cubic yard, and was the lowest bidder, if rock was to be considered; if rock was excluded, a third contractor was the lowest bidder. The street commissioner, in assigning the contract, omitted all rock and gave the contract to Mr. Brady, and it was confirmed by the common council. Mr. Brady performed the work, and excavated nine hundred and forty-three yards of rock.

The cost of setting the curbs and gutters, and performing the work estimated for by the surveyor, was about thirty-six hundred dollars, but the claim for excavating rock was twenty-three thousand five hundred and seventy-five dollars.

Mr. Brady received, as the work progressed, about nineteen thousand dollars, being the usual advance of seventy per cent, and the common council subsequently confirmed an assessment for the entire amount.

The attention of the Comptroller was however attracted to the great difference between the original estimate for the work, which was about four thousand dollars, and the amount claimed, and after investigation he refused to pay anything more.

Mr. Brady then commenced suit against the city, but the decision was in favor of the city in the superior court, at general term, and in the court of appeals.* He now asks the Legislature to intervene, override the action of the courts, and require the city to pay him about nine thousand dollars, which the courts have decided the city does not owe him. The decision of the courts rests in the well known principle that officers of a corporation have only a limited power, and that ' those who deal with a corporation, whose mode of dealing is prescribed in their charter, must take notice of such prescription at their peril,' and that in this case the contract was not given to the lowest bidder as the charter requires, and was therefore illegal and void. Even if the decision rested on a mere technical ground, and not on a sound principle, it does not seem to me that any reason is shown for legislative interference in this case. Mr. Brady has already received far more than the work he has done was worth. For excavating nine hundred and forty-three yards of rock he has received at least fifteen thousand dollars, while at the ordinary price the work would have been worth not more than fifteen hundred dollars.

Believing that, under these circumstances, no hardship has been done to Mr. Brady, and that this certainly is not a case where justice requires legislative interference with the decisions of the courts, I return the bill for reconsideration.''

The bill was not passed over the veto.

* See Brady v. Mayor, etc. New York (1859), 20 N. Y. 312.

April 17. To the Senate:

Veto of a bill entitled "An act to erect a new county from part of the county of Steuben, to be called the county of Conhocton, and to provide for the holding of the courts therein."

The bill was vetoed on the same grounds as the Canisteo bill, (see special message of April 9) with the following additional suggestions:

"As the proposed county of Conhocton, contained in 1855 less than 20,000 inhabitants, and is not shown to have increased since that time, the same objections apply to the bill which originated with your body." * * * "There are, moreover, the additional objections, that the bill herewith returned, by providing for a prospective annexation of a portion of its territory to the county of Steuben, neutralizes in a measure any probable increase of population, and that if the county of Canisteo is not to be erected, it divides the territory of the present county of Steuben in a very inconvenient manner, while if both are to be erected it leaves the county of Steuben with a population of less than 19,000, on the basis of the census of 1855."

The bill was not passed over the veto.

April 17. The Legislature adjourned without day.

1861. JANUARY 1. LEGISLATURE, EIGHTY-FOURTH SESSION.

EDWIN D. MORGAN, Governor.

ANNUAL MESSAGE, JANUARY 2.

To THE SENATE AND ASSEMBLY.— You have met under circumstances of more than usual interest, to perform the high and responsible duty of making laws which are to affect the honor, welfare and happiness of millions. High, because no earthly power is superior to that which pre-

scribes rules of action for all; and responsible, because you are acting in a representative capacity, and are therefore charged with sacred trusts. If anything were needed to heighten the importance of your position, you have but to reflect that you represent the sovereignty of the State of New York, the noblest, the grandest commonwealth that ever had existence; an empire of nearly four millions of people, imperial in all its proportions, with interests the most varied and hopes the most exalted. It has a proud history and a proud name to preserve. Those who fashioned our institutions have passed away, but their works stand, immortal monuments of their wisdom and patriotism, and accepted as fit models by other States. It remains for us to say whether these shall continue to be worthy of emulation, whether we appreciate the legacy committed to our keeping.

Entering upon our grave duties with the first day of the New Year, let us implore the favor and seek the counsel of Him who has warded off the pestilence, who has quickened our energies, rewarded our labors with abundant return, and whose guidance has been apparent in every trying period of our country's history.

Having been chosen by your respective constituencies under circumstances which impose special obligations upon yourselves, it is for you to determine whether the eighty-fourth legislative session shall be characterized by acts of wisdom and justice, by measures which shall confer honor upon your own names, and reflect credit upon the State and country.

Let us each recollect that the people are the source of all political power, that their will is the simple and safe rule of our conduct, and that, however complicated at times may seem the condition of public affairs, by permitting it to give shape and direction to our acts, we shall be representing the governed and shall thereby secure their approval.

Without pledges of any kind, save those imposed by duty

to God, the Constitution and the laws, and anxious only for the passage of the wisest and best measures, I promise you my ready co-operation in perfecting such enactments as will promote the interests of the people and the honor of the State; and it may not be out of place here, in giving a new pledge for the performance of duty in a manner becoming my position, to express my gratitude for the continued confidence and support of the people.

In submitting for your consideration such general recommendations as I deem expedient, and in making such observations as are most deserving of notice, I shall leave to the very capable heads of the respective departments, to whose prompt co-operation in the Government I am greatly indebted, the more specific and detailed statements and suggestions, anticipating only so much as will enable me to lay before you a general account of the condition of the State.

And, first of all, I would, in respectful though decided terms, recommend a session as brief as is consistent with the public interest. The Constitution has practically limited even the most important sessions to one hundred days, and I think it may be fairly inferred that it was not expected that ordinary sessions should be prolonged to that extent.[a] One of the most serious evils of legislation is its excess. Such is the facility, under our system, for multiplying statutes and making innovations, that we scarcely reflect how serious a matter it is. Amendments are adopted, and laws are passed without any seeming demand for them. Every State in the confederacy has experienced this and has tried to remedy it. Some have sought a corrective in the policy of biennial sessions. New York, restrained from following their example in this respect by her organic act,* can only rely upon the wisdom of each recurring legislature for the needed reform.

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[a] Const. 1846, art. 3, § 6.

* Const. 1846, art. 10, § 6.

I earnestly advise you to avoid the practice, by far too prevalent, of local and special legislation. The great evil sought to be remedied by our present Constitution was that of monopolies and of class legislation. If difficulties arise let general laws be amended or passed, but let our policy be opposed to special enactments. No rule can be more equitable than that of laying down general laws and requiring all alike to regulate their conduct by them. Special laws interfere with the administration of justice, operate unequally upon our citizens, engage the time and energies of the Legislature, and serve to confound rather than to protect the rights of the people.

Our financial condition presents some interesting facts which I doubt not you will carefully consider.

The receipts of the treasury from all sources, during the fiscal year ending with September 30th, 1860, were.....	$15,538,263.09
The balance in Treasury on Oct. 1, 1859, was	1,909,942.04
	$17,448,205.13
The total payments from the Treasury during the fiscal year, were.....	14,148,667.64
Leaving a balance in the Treasury on Oct. 1, 1860, of.....	$3,299,537.49

The Funded Debt of the State on October 1, 1860, was, of General Fund debt.....	$6,505,654.37
Of Canal debt.....	27,064,584.48
Making a total of.....	$33,570,238.85

The stock of Funded Canal Debt outstanding on September 30, was authorized by the Constitution, as follows, viz:

Pursuant to					Bearing annual interest of
Article	7,	section	1.....	$10,721,998.99	$557,677.00
do	7,	do	3.....	13,200,000.00	782,000.00
do	7,	do	10.....	642,585.49	34,629.28
do	7,	do	12.....	2,500,000.00	150,000.00
				$27,064,584.48	$1,524,306.28

When, in any year, the surplus revenues of the canals do not exceed the sum of seventeen hundred thousand dollars, the Constitution requires that the interest on the Old Canal Debt, amounting in the last fiscal year, to five hundred and fifty-seven thousand six hundred and seventy-seven dollars, shall first be paid therefrom, and the balance, which last year was one million one hundred and eleven thousand nine hundred and thirty-four dollars sixty-one cents, shall go to the Sinking Fund established by Article 7, section 1, to redeem the principal.

The balance of $966,629.28 due for annual interest on the Canal Debt alone, was, last year, paid by anticipating the income of the direct tax, and will necessarily continue to be paid in the same manner so long as the surplus revenues are insufficient.

If the surplus revenues of the canals shall enable the Commissioners to set apart annually, to this Sinking Fund the whole sum of one million seven hundred thousand dollars, it will form a fund sufficient to extinguish the debt of 1846, amounting to $10,721,998.99 by the first day of January, 1867. This portion of the public debt is to be immediately reduced, by the payment of nearly one million dollars thereof due this day, the money for which is in the Treasury.

The Legislature of last winter authorized a levy of one and one-eighth of a mill tax to pay the interest on loans, overdrafts and interest on overdrafts, but the money being needed before the taxes could be collected, the Commissioners of the Canal Fund, under authority of chapter 335, of the laws of 1855, anticipated the collection of so much of it by borrowing the sum of one million two hundred thousand dollars. This sum, which forms in the above table a part of the debt of $13,200,000, will, with the accrued interest, be paid from the proceeds of that levy on the 1st of January next.

There was, on the 30th of September last, of ascertained canal claims unpaid, the sum of $580,653.84, consisting of drafts and certificates of Canal Commissioners, and of awards for land damages made by the Canal Appraisers. Of this sum $187,500 have been or will be paid out of the Floating Debt loan; and the remainder, $393,153.84 from the proceeds of the direct tax raised and to be raised under chapter 213, of the Laws of 1860. There are unascertained claims outstanding for the 15 per cent. withheld on contracts not yet completed. When due these will also be payable from the taxes as above.

Under the provisions of chapter 105, of the laws of 1857, the Contracting Board placed the ordinary repairs of the canals under contract to the lowest bidder. The aggregate annual cost under these contracts is $259,372. Certain portions of the repairs, such as rebuilding locks and aqueducts and other important structures, are excepted, and it is not, therefore, expected that that sum will cover the entire cost of the ordinary repairs. Although there are some evils consequent upon this system, yet its advantages are so manifest that, for the present at least, it should be continued.

Assuming the correctness of the estimates of the State Engineer, the sum of six hundred thousand dollars, already raised on the credit of the half mill tax and applicable to

that object, will complete ready for navigation by the first of May next, all the work under contract on the 1st of October last, thus opening the enlarged water channel of seven feet by seventy, throughout the entire line of the Erie, Oswego, and Cayuga and Seneca canals.

Although enlarged at too great a cost, and the completion quite too long delayed, it is nevertheless a matter of much congratulation that the end approaches, and that no more laws imposing taxes for construction will be required, and ere you will have concluded your labors the present session, New York will possess, finished and complete, a system of internal works unequaled both for capacity and extent in this or any country.

The Constitution disposes of the revenues derived from the canals, annually, in the following order and for the purposes designated:[b]

1st. To pay the expenses of collection, superintendence and ordinary repairs of the canals, which, during the fiscal year ending with September 30, amounted to $726,976.03.

2d. To pay the interest and provide a Sinking Fund, to pay the principal of the canal debt as it existed on the 1st of June, 1846, $1,700,000.

3d. To pay the interest and provide a Sinking Fund to pay the principal of the General Fund Debt, $350,000.

4th. To pay the interest and provide a Sinking Fund to pay, in eighteen years, the canal debt of twelve million dollars, contracted to enlarge and complete the canals, viz:

Of interest	$710,000.00	
Of Sinking Fund.....	406,242.65	
		$1,116,242.65

5th. For the support of government, $200,000.

[b] Const. 1846, art. 7, §§ 1, 2, 3, am. 1854.

6th. To pay the interest and provide a Sinking Fund to pay, in eighteen years, the Floating Debt loan of $2,500,000, contracted under authority of art. 7, sec. 12 of the Constitution, and chapter 271, laws of 1859, $288,888.88.

7th. The remainder to be expended each year upon the canals, until they are completed, and after that as the Legislature may direct.

From this brief statement of the requirements of the Constitution, as they affect the direction of the canal revenues, it will be seen that a gross sum of $4,382,107.56 was necessary the past fiscal year to meet all its demands. A reference to this will also show that the principal of the canal debt will be reduced to the extent of two million two hundred thousand dollars by the 1st of January next, leaving due of that debt $24,864,584.48, after that date.

It will appear from the Auditor's annual report of the present year, that on the 30th of September, 1859, there was, in the Treasury, and invested, belonging to the Canal Fund, the sum of	$1,403,166.34
Received during the past fiscal year	7,947,166.15
	$9,350,332.49
The payments during the year for all purposes pertaining to the Canal Fund, have been	6,975,314.73
Leaving a balance to the credit of the Canal Fund on the 30th of September of	$2,375,017.76
Of this balance there was on deposit in banks, to the credit of the Treasurer on account of the Canal Fund	$2,266,385.05

Of investments held in trust by the Auditor:		
Bank fund stock	$73,079.15	
Canal stocks	10,050.00	
Of real estate securities:		
Walter Joy's Bank	20,354.06	
Bank of Corning	5,149.50	
		$108,632.71
		$2,375,017.76

The following summary presents the gratifying information that as compared with the previous year, the Canal Fund income for the past year has increased $556,708.86, and the expenses of collection, superintendence and ordinary repairs have decreased $190,903.68, making a total gain of surplus revenues of $747,612.44. Yet to meet all the requirements of the Constitution the further gross sum of $1,965,519.17 is necessary.

The receipts from the canals for the past fiscal year were as follows, namely:

For tolls on the Erie canal	$2,055,220.22	
Champlain canal	114,128.11	
		$2,169,348.33
Oswego canal		109,840.03
Cayuga and Seneca canal		20,089.09
Chemung canal		18,579.46
Crooked Lake canal		683.34
Chenango canal		22,214.37
Black River canal		6,330.71
Genesee Valley canal		30,801.74
Oneida Lake canal		290.33
Baldwinsville canal		23.17

Oneida River improvement	$1,015.98
Seneca River towing path	144.05
Cayuga inlet	173.44
Total from canal tolls	$2,379,534.04
From rent of surplus waters	1,767.24
From interest on current canal revenues, &c.	35,287.11
	$2,416,588.39

The payments during the same period were as follows:

To Superintendents, for repairs	$149,158.22	
To Contractors, for repairs	229,127.67	
To Canal Commissioners, for repairs, &c.	231,753.23	
To Collectors, for salaries, clerk hire, pay of ass't collectors, inspectors, and expense of collectors' offices	87,021.37	
To Weigh Masters	9,867.67	
For salary of Auditor and clerk hire in Canal Department, salary and extra clerk hire of State Engineer, refunding tolls, printing, and miscellaneous payments	40,048.62	
		$746,976.78
Surplus revenues		$1,669,611.61

Although largely augmented, yet a deficiency of nearly two million dollars still exists in the income of the canals to meet its constitutional obligations, and so long as the

railroads are permitted to carry freight free of toll, it will be necessary to levy a direct tax annually to meet any deficit.

In my last annual message, in view of the depressed condition of our finances, I recommended two measures of relief. The one was a restoration of the tariff or rates of canal tolls, as they existed prior to the reductions of 1858 and 1859, and for which I gave my reasons at length, and to which, without repeating them, I would respectfully invite your attention. The other was a re-imposition of tolls upon competing railroads. The former of these recommendations was subsequently adopted in part by the Canal Board, and the State is now realizing, in greatly enhanced receipts, the benefits of this policy. It is manifestly the duty of the Canal Board, and I believe it is their intention, to revise the rates of toll with a view to secure a further advance the present season. Respecting the policy of re-imposing tolls on railroad freight, after discussing the question at length, in that communication, I said in conclusion:

"If, therefore, the constantly increasing amount of freight carried over the railroads has occasioned a corresponding diminution of our canal revenues until the interest on the Canal Debt formerly paid from these revenues, has now to be drawn by direct taxation from the people, is there not an imperative necessity for protective legislation? I cannot doubt either the wisdom or the justice of reimposing, for a few years, a moderate rate of toll per ton, during the season of navigation, upon all freights passing over railroads competing with the canals, or of requiring these roads to pay an aggregate equivalent in money, annually, into the treasury. When the canals shall have been completed, the railroads should be relieved from a burden temporarily imposed, so that commerce may have the advantage of the quickest and cheapest means of transit

for merchandise and produce to and from the vast and bountiful west.* "

The Legislature not having acted upon this recommendation, and in view of the importance of the subject, I felt compelled, in February last, to renew it in a special message to both Houses, concluding as follows:

"We have now arrived at a point where the public creditor has no positive security that the interest and principal of his debt will be paid as it becomes due. He knows that it will not be paid from the fund consecrated to it, for that has been rendered insufficient by legislation. It was the intention of the Constitution that he should have a definite fund or revenue on which he could rely, beyond the control or neglect of the Legislature, and subject only to the remote contingency arising from a possible stagnation of business.

"If we allow the matter to remain as it is, the public creditor will have much cause to complain; but if we reimpose tolls upon railroads that are diverting and impairing the revenues of the canals, and suitably increase the tolls upon the latter, he will either receive back the revenues pledged to him, or their loss will be due to other causes than improvident legislation. At the same time the taxpayer will pay the taxes cheerfully, when he feels that he is not taxed to pay interest on the Canal debt till every effort has been made to procure the required amount from the canals themselves.† "

Fully sensible of the large prospective demands upon the public treasury, and of the absolute necessity of meeting them, and believing that the tolls on the railroads should be at least temporarily restored, thereby relieving the taxpayers of a portion of their increasing burthens, it was a matter of very great regret to me that the Legislature did not see fit to adopt these recommendations. I am

* See *ante*, p. 162.

† See *ante*, p. 211.

aware that the revenue contemplated by article seven of the Constitution might not have been fully realized during the past year had this been done. Yet I believe that it would have been sufficient, during the present year, with this addition; thus removing all occasion for a direct State tax, except for the support of government and the purposes of education.

Subsequent reflection and observation have only confirmed the views I expressed in the two communications referred to, as to the wisdom and justice of placing tolls upon the railroads during the season of navigation; nor have they served to produce any fear that the competing railroad lines of other States will divert the business which legitimately belongs to the canals and railroads of our own State, and I therefore commend the whole subject, with all its important relations, to your dispassionate consideration.

It is urged that the restriction as to rates of passenger fare over the New York Central railroad, now limited to two cents per mile, should be removed, if the tolls are reimposed; and as by the General Railroad act, passed in 1850, all corporations formed under it have power to regulate the amount of compensation to be paid for transporting passengers and their baggage, with the simple reservation that such charge is in no case to exceed three cents per mile, it is not easy, perhaps, to assign any reason why the provisions of this act should not be extended alike to all the roads in the State.[1]

As will be seen, there has been no change in the principal of the General Fund Debt during the year. The Comptroller, whose report will be presented to you at an early day, will submit for your consideration the condition of the several specific funds under his charge, together with the

[1] The canal legislation at this session included the usual acts making appropriations for canal improvements and administration, an act, chapter 102, providing for the investment of the sinking fund, and an act, chapter 177, fixing at three years the official term of canal auditor, and prescribing his general duties.

important facts connected with their revenue, and a detail of the estimates of the expenditures for the support of Government for the coming year. In this connection I will only add that the General Fund, which since the thirtieth of September, 1834, has been largely in arrear, has at last emerged from its embarrassments, showing a credit balance at the close of the past fiscal year of eighty-two thousand nine hundred and sixty-eight dollars and ninety-cents; thus vindicating the present policy of "confining appropriations to the simplest and most economical necessities of government."

I cannot leave this topic without adverting to the subjects of taxation and retrenchment. The depleted condition of the Treasury, induced, it must be admitted, by a mistaken policy of previous years with respect to the Canals, and by pledging the credit of the State for improper objects, compelled the Legislature last winter to levy a direct State tax of three mills and five-sixths of a mill on each dollar of the taxable property of the State. Notwithstanding the present financial embarrassments, there is every reason for believing that these assessments, though large beyond all precedent, will be promptly met. The people have, at all times, cheerfully responded to demands, however onerous, whenever they have felt the positive necessity of doing so, whether to preserve the faith of the State or to carry forward to completion our great work of inter-communication between the Western Lakes and the Ocean. But as we have seen, the latter is now nearly completed, and while the General Fund is in a condition to meet the reasonable claims upon it, we should be admonished, in view of the errors of the past, which have compelled a resort to this excessive taxation, and in view of the present pecuniary difficulties of the country, to adopt that wise and just rule, which requires a rigid scrutiny of every measure seeking appropriations from the Treasury; and after the expensive lessons of former years, you will,

I think, hardly need to be reminded of the injustice of committing the State, especially at this time, to measures of doubtful propriety, much less of making appropriations for any purpose in excess of the means provided.

The two fiscal bills of greatest public interest, are the General Appropriation Bill and the "Supply Bill." The former of these, specifically provides for the support of the Government for the fiscal year commencing with October next following the session. This measure has sometimes been delayed in order to advance private interest. The "Supply Bill" originally intended to provide for the payment of such proper demands as could not be delayed until the General Appropriation Bill fell due, has of late years been burthened with many inconsistent and unjust provisions, and, passed, as it usually has been, at the last hour of the session, the Executive is left only a choice between depriving honest creditors of their dues, or of authorizing the payment of thousands of dollars of demands, totally without foundation.* To correct this serious and growing evil, I recommend that you introduce and perfect these two measures during the first month of the session.

The practice of annually applying to the Legislature for extension of time for the payment of taxes, may be repeated at the present session. The public interests require at your hands an emphatic denial, should such an application be made to you. There seems to be no good reason why a tax levied in October should not be paid by the first of the following March. Those whose opportunities best qualify them to judge in this respect, as well as my own observations, satisfy me that movements of this character are not made by the taxpayer, for he, with commendable promptness, has paid over his dues; but by or on behalf of collectors and treasurers. The moneys are payable at the Treasury within a given period, where they are needed

* See Const. 1846, art. 4, § 9, am. 1874, authorizing the veto of separate items in appropriation bills.

to meet the demands of the State; whoever, therefore, for his own profit, delays or withholds them, is guilty of serious wrong, and is deserving of public censure. The moneys are frequently made use of by the custodians, and experience has shown that in the end, either the individual or the State is brought to suffer loss thereby. I felt it to be my duty, on the seventh of March last, to return to the Assembly without my sanction, the bill entitled "An act extending the time for the collection of taxes in the several counties of this State." It was strongly urged that the payment of the delinquent taxes could not be enforced unless this bill became a law, but it is well known that the levy was collected without more than the ordinary difficulties. I would suggest that, instead of seven per cent. which is now chargeable on all balances due from county treasurers after the first of May, the Comptroller be authorized to charge ten per cent., that being the same as paid by individuals on taxes on non-resident lands. This would produce uniformity and cause more promptness on the part of those officers.[2]

The Court of Appeals has decided that the law passed by the last Legislature entitled "An act in relation to capital punishment and to provide for the more certain punishment of the crime of murder," is *ex post facto* and void as to capital offences committed before it took effect; and also, that such offences cannot be punished under the old law, because that was expressly repealed.[c] For this reason, and the further one that the present statute abrogates the mode of putting to death by hanging without providing any other, legislation upon the subject appears to be imperatively necessary, and its importance demands your immediate attention.

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[2] See special message of February 27, vetoing a bill to extend the time for the collection of taxes in Oneida county.

[c] Hartung v. People (1860), 22 N. Y. 95; see same case (1863), 26 N. Y. 167, in which was considered the amendatory act of 1861, chap. 303, U. S. Const. art. 1, § 9, clause 3.

The exigency can be met by a statute very simple in its provisions. It should repeal the act of the last session, and should contain a proviso that such repeal should not affect crimes, or the indictment or punishment thereof, committed after the act of 1860 took effect and before the one proposed shall become a law. Such an enactment would restore the old law as to capital offences committed before the act of last year was passed, and would preserve that act as to offences committed while it is in force. To restore the pre-existing law as to this class of crimes would be unconstitutional, and the same objections might lie, as to these offences, against a new law.

In order to execute the provisions of the law of 1860, the proposed act should contain a section providing that in all cases the punishment of death therein prescribed, shall be inflicted by hanging. In legislating on this subject, three classes of cases must be kept in view, to wit — offences committed before the late act took effect; those committed while it is in force; and those which may be committed after the passage of the act now proposed. Such an act as here suggested, would restore the old law as to the first and last of these, and would preserve the existing law as to offences committed under it. This, I doubt not, is necessary, and in accordance with public sentiment; but, if the policy of the State respecting the punishment of capital crimes is to be changed in a manner so radical as was attempted in the law of last year, I advise that a new code be prepared for that purpose, instead of attempting to amend existing laws.[3]

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[3] See 1860, note 6, *ante*, p. 172. The Governor's suggestions were embodied in chapter 303, passed April 17, which restored provisions of law relative to the punishment of murder and arson in force at the time of the passage of the act of 1860. The new act was also intended to provide for cases of conviction under the act of 1860, or under prior statutes.

This act and the act of 1860, chapter 410, were repealed in 1862, by chapter 197, passed April 12, which divided the crime of murder into two degrees, and prescribed the punishment of arson. See Hartung v. People (1860), 22 N. Y. 95; (1863) 26 N. Y. 167.

The pardoning power, a prerogative conferred by the Constitution upon the Governor, is a delicate and necessary one, the proper exercise of which involves patient research and the most careful discrimination.[d] Juries are sometimes misled by circumstantial evidence, witnesses occasionally err, sometimes perjure themselves, youth and inexperience, the condition of the mental and physical health, signal and opportune services rendered in cases of outbreaks in prisons, appeal forcibly to the pardoning power, and there are rare cases where newly discovered evidence is presented, which, if produced on the trial, would have changed the result; but where full opportunity was afforded, competent counsel was had, where the court and jury deliberately pass upon the case and the sentence is manifestly not disproportioned to the offence, judgments of the courts should not be lightly disturbed. Still the way must ever be kept open for every form of petition, for all are alike entitled to share in the advantages of that merciful provision for modifying the severity of the law's decrees, which a wise people always lodge somewhere; yet even here abuses may creep in. It is a practice by far too common with the judiciary of coupling with the sentence of offenders, positive or implied, (though always unauthorized,) promises of Executive interference. It is better that each official, executive or judicial, should perform his duty in the manner prescribed by the laws, leaving penalties to fall upon those who have merited them; and any unsolicited interference by the courts, after sentences have been pronounced, is not demanded by justice, and experience proves it to be pernicious in its influences. I believe that for some offences the term of imprisonment now fixed by law is excessive. I have heretofore urged the Legislature to confer larger discretion upon judges in fixing terms of sentence. When this shall be done, and the

[d] Const. 1846, art. 4, § 5.

public come to feel that the punishment meted out is a proper measure of the guilt, convictions will be more certain, there will be less occasion for executive interference, and our penal code will operate as a powerful restraint upon the commission of crime.

In 1859, I deemed it due to the importance of the subject that I should visit the several State prisons, and personally examine as well those convicts who had previously applied for pardon, as those who, for want of friends, or other sufficient causes, were entitled to such consideration, and had made no application. In the administration of the pardoning power, there are great advantages in this course, and in my last annual message I referred to this subject in detail. In the month of September last, I visited the Auburn and Sing Sing Prisons, spending two or three days at each, and examined two hundred convicts, pursuing essentially the same plan as before.

There were undecided on the 1st of January last, one hundred and eighteen applications for pardon, and one application for commutation; and there have since been received three hundred and forty-six applications for pardon, and two applications for commutations, and forty-six old cases have been reviewed, making in all five hundred and eight. Of these I have examined and decided three hundred and eighty-two; of which number I have pardoned seventy-eight, have denied two hundred and eighty-eight, have commuted fourteen, denied commutation to two; two have died, two have been discharged by courts, and the terms of twenty-seven have expired before the applications were acted upon, and ninety-five, in consequence of the delay to perfect the papers, remain undetermined.

The number of persons pardoned for every description of offence, including misdemeanors, in 1820, was three hundred and fifty-four; in 1821, there was three hundred and eleven; in 1822, was two hundred and nine; in 1823, was one hundred; in 1824, was one hundred and eighty; in

1825, was one hundred and seventy-three; in 1826, was two hundred and eighty-five; in 1827, was one hundred and ninety; in 1828, was two hundred and thirty-one; in 1829, was eighty-eight; in 1830, was one hundred and thirty-eight; in 1831, was one hundred and fifteen; in 1832, was one hundred and seven; in 1833, was one hundred and sixty; in 1834, was one hundred and forty-nine; in 1835, was one hundred and thirty-one; in 1836, was ninety-three; in 1837, was one hundred and eight; in 1838, was one hundred and fifty-eight; in 1839, was sixty-four; in 1840, was eighty-five; in 1841, was eighty; in 1842, was one hundred and fifty-eight; in 1843, was one hundred and thirty-three; in 1844, was one hundred and thirty-three; in 1845, was one hundred and thirty-two; in 1846, was one hundred and eight; in 1847, was one hundred and twenty-nine; in 1848, was one hundred and thirty-nine; in 1849, was thirty-five; in 1850, was sixty-two; in 1851, was one hundred and sixty; in 1852, was one hundred and eighty-six; in 1853, was two hundred and seven; in 1854, was two hundred and forty-nine; in 1855, was two hundred and fifty-three; in 1856, was two hundred and seventy-seven; in 1857, was one hundred and eighty; in 1858, was two hundred and four; in 1859, was eighty-three; in 1860, was seventy-eight.

In October last, complaints were made to me that punishments, unduly severe, had been inflicted in one of our State prisons.[e] Though the Constitution places the charge and superintendence of the prisons in other hands than mine,[f] I nevertheless deemed it my duty to call the attention of the agent and warden to these statements, and received from him a denial of the allegations. The complaints, however, are persisted in by responsible persons, and I would therefore recommend the passage of a law providing for the appointment of a Commission, whose actual expenses alone should be paid by the State, to inquire into the sys-

[e] Const. 1846, art. 1, § 5.
[f] Const. 1846, art. 5, § 4.

tem of our prison management, with reference alike to discipline and economical administration.

The Board of Inspectors have furnished the following statement of the earnings of the State prisons, during the year ending with September 30, 1860:

Of Sing Sing prison	$111,640.92
Of Auburn prison	100,345.72
Of Clinton prison	26,640.92
Amounting to	$238,627.56

This is a gain, as compared with the previous year, as follows:

For Sing Sing prison	$14,991.79
For Auburn prison	27,662.39
For Clinton prison	5,061.86
Being a total gain during the year, of	$47,716.04

The actual receipts into the Treasury for earnings during the year, were:

From Sing Sing, including female prison	$99,993.77
From Auburn	98,286.53
From Clinton	23,273.02
Aggregate receipts	$221,553.32

This sum necessarily differs from the amount stated as earnings, because the contractors are still indebted to the prisons on unfinished contracts.

The amount paid from the Treasury for the support of the prisons during the fiscal year was, for

Sing Sing, including female prison	$138,135.36
Auburn, including female prison	81,317.60
Clinton, including female prison	63,252.61
Amounting, for support, to	$282,705.57

There has also been paid to

Sing Sing, for buildings and repairs	$24,381.11	
For books	200.00	
		$24,581.11
Auburn, for buildings	$19,336.50	
For books	200.00	
		19,536.50
Clinton, for buildings	$18,000.00	
For books	100.00	
		18,100.00
Salaries of Inspectors		4,800.00
Traveling expenses of Inspectors		2,305.46
Transportation of convicts		20,017.00
Asylum for insane convicts, for support		19,586.33
Total expenditure of		$391,631.97

Or a deficiency of $170,078.65 in the revenues of the prisons paid in, to meet the entire cost of the prison system, including the expenditure for buildings and permanent repairs. If we take the difference between the earnings and the total expenditure it will be found to be $153,004.41.

It will be seen that Auburn prison has earned within a fraction of sufficient to pay the whole cost of its support, and also to pay $19,336.50 for buildings; that burthened with the female prison, Sing Sing prison has earned

within $26,494.44 of its support; and Clinton has made a net gain of $12,827.92 during the year.

As will be seen from the following table, the number of convicts is increasing, and it is worthy of consideration, whether persons convicted of the less heinous offences should not be sentenced to the county penitentiaries. The Legislature last winter authorized the expenditure of $20,000 for enlarging Auburn prison, but that, as well as the other prisons, will soon be insufficient to meet the demands upon them; and it is a question which it will be soon necessary to answer, whether we shall not be obliged to build another prison somewhere in the Southern tier of counties. Discipline and economy would seem to discourage the idea of increasing the number of cells in the present prisons.

	Sing Sing.	Auburn.	Clinton.	Total.
No. of convicts on September 30, 1859.....	1,228	811	447	2,486
Received during the year ending September 30, 1860	487	283	114	884
	1,715	1,094	561	3,370
Discharged by expiration of sentence, pardoned, died and escaped.....	340	241	130	711
	1,375	853	431	2,659

Of the above there were in the Sing Sing prison on September 30, 1859, of females.....	136
Females received during the year.....	49
	185
Discharged, pardoned and died	48
Female convicts in Sing Sing prison on September 30, 1860	137

From the foregoing statements it will be seen that the earnings fall short of the entire support of the convicts only forty-four thousand and seventy-eight dollars and one cent; and but for the two fires at Sing Sing, the cost of the support of that prison would have been more nearly met. There is reason to fear, however, that owing to the stagnation of business, and the consequent disinclination of contractors to engage convict labor at the most remunerative prices, that the current year will be less prosperous than the preceding one. Hence, care should be taken in making provisions for the future, lest estimates predicated upon the statistics now presented, may, for the reasons stated, be insufficient. We have every assurance, however, that whatever can be accomplished by economy and regard for the interests of the State, will be done by the prison officers.

The Asylum for insane convicts at Auburn, has been conducted during the past year at an expense of nineteen thousand five hundred and eighty-six dollars and thirty-three cents. This sum embraces an expenditure, as stated by the Inspectors, of $3,269.63, for buildings and repairs. The earnings have been eighteen hundred and twenty-one dollars and thirty cents. The asylum was opened in February, 1859. From that date up to the 30th September last, the whole number of insane convicts received was sixty-nine; fourteen of whom have been discharged; leaving fifty-five in the institution at the latter date. During the past year fourteen patients have been admitted, and ten discharged. Of the humanity of an asylum of this character it is needless to speak.[4]

I recommended the last Legislature to provide for reviewing the claims of Jacob D. Kingsland against Clinton State Prison, believing the award of fifty-nine thousand

[4] Chapter 63, passed March 21, 1861, directed the removal of all male insane convicts from the State Lunatic Asylum at Utica, to the Asylum for Insane Convicts at Auburn.

two hundred and thirty-nine dollars and sixty-one cents against the State to be both excessive and invalid. An act was accordingly passed, directing the Governor to appoint three commissioners, to whom all matters in difference between the State and Mr. Kingsland should be referred for final adjustment. An agreement was duly executed to abide by the award. The three Commissioners who were then appointed entered upon the discharge of their duties, and after a most thorough and careful examination of the matters and claims submitted under the law, they reversed the determination of the two Commissioners made in 1859, as above, and instead thereof, decided that the People have a just and legal claim against Jacob D. Kingsland of seven thousand eight hundred and ten dollars and eighty-six cents.

Our Educational System is justly the pride of the commonwealth. Granting to all a thorough course of common school education, New York fully recognizes the duty of the State to educate her children. Depending for their stability and perpetuity, as do our institutions, and the safety of life and property, upon the intelligence and moral worth of the people, it becomes a matter of the first importance to retain, unimpaired, so far as may be, the plan which thus far has been productive of such inestimable benefits. The provisions of our laws as they affect the school system are generally approved, and should not be lightly disturbed. It is bad to commit errors in financial and political policy, but infinitely worse to do so in matters pertaining to the education and future happiness of our children. Although heavily taxed, our people show no disposition to avoid assessments for the support of schools; and it may be remarked as an evidence of their liberality, that more than thirteen hundred thousand dollars are paid out of the public treasury annually for this purpose. The Superintendent of Public Instruction, who, in the discharge of his duty has visited nearly every portion of the

State, will submit to you in his annual report many interesting facts and conclusions respecting the workings of the system; and that in the improved style of school houses, the qualifications of teachers, and the general improvement in other respects, we have proof that these educational advantages are appreciated by the people.

The academies of the State, under the supervision of the Regents of the University, are in a condition of advancing prosperity. Their reports for the last year show an increase in the number of pupils over those of the preceding year, and an advance in the course of instructions. They furnish an education well adapted to the practical purposes of life, and provide, especially for the rural districts, a large portion of the teachers of the common schools.

The colleges, in all that contributes to the highest classical and scientific education, have attained a high position, thus relieving our citizens from the necessity of sending their sons to the institutions of other States.

The Secretary of State will submit to you his annual report, embracing the statistics of pauperism, as shown by the returns to his office, of the superintendents of the poor of the several counties; and also his annual report on the criminal statistics of the State.

Our present Banking Capital is larger than ever before, it having reached an aggregate of $111,834,347, an addition of $837,307 during the past fiscal year. The increase of bank note circulation during the same period was $1,453,-524. The details of our Free Banking system having been subjected, during a period of more than twenty years, to such amendment as experience has from time to time suggested, it is now in pretty general favor with the community, and, as a system, is undoubtedly far preferable to any former one.

During the recent financial panic, occasioned by political disquietude, the banks of the city of New York, in view of

the important bearing it would have upon the business interests of the country, adopted the enlightened policy of very considerably increasing their discount lines. The wisdom of this course was fully vindicated by the marked relief it afforded to the community.

In conformity to the law of April 15, 1859, establishing the Insurance Department, a Superintendent was appointed by the Governor and Senate, who entered upon his duties on January 11, 1860. His general powers are the same as those previously conferred upon the Comptroller in relation to insurance companies. On the first of March last, the Superintendent submitted to the Legislature his first annual report. From this it will be seen that eleven new joint stock fire insurance companies were organized during the year 1859, with an aggregate capital of $1,900,000, and that four old companies added $850,000 to their capital, making a total increase of capital during that year of $2,750,000. During the year 1860, two fire insurance companies were organized, with a total capital of $250,900; while three old companies added $550,000, making an aggregate increase during the year of $800,000. The Superintendent has either personally or by commission examined seven companies which were deemed unsafe. Six of these, with an aggregate capital of $956,511.50, on examination, were found not to possess sufficient assets to justify their continuance in business, and were therefore dissolved on the application of the Attorney General. The assets of the remaining one, with a nominal capital of $100,000, were found to be insufficient. The motion of the Attorney General before the Supreme Court, to dissolve, was denied, and an appeal is now pending. No marine insurance company was incorporated in 1860. Three life insurance companies were organized, with an aggregate capital of $450,000. The Department now holds about $2,000,000 of securities deposited by life insurance companies for the protection of policy holders.

A separate department, devoted to this important interest, has long been required, and under the management of the present Superintendent, the propriety of its establishment has been made clearly manifest. Some amendments are found to be necessary in reference to the manner of making reports by Marine Insurance companies doing business under special charters, and also in respect to the power of the Superintendent to examine into the affairs of unsound companies of this class. It will be remembered that the salaries and expenses of this department, though paid from the public treasury in the first instance, are reimbursed to it by the several insurance companies.[5]

You will receive from the State Engineer and Surveyor his annual report on the canals, containing information in relation to his proceedings under the law of 1850, together with such suggestions in that relation as he deems the public interest requires. He will also communicate his annual report on the railroads of the State for the past fiscal year.

The annual report of the Canal Appraisers, for 1860, will show that since January 1, 1855, nearly three thousand claims have been filed with that board, for canal damages, amounting in the aggregate to over five millions of dollars. Of this number they have examined about eighteen hundred claims, upon which three million five hundred thousand dollars were claimed, and have awarded thereon about one million dollars. It is believed that five hundred thousand dollars will be sufficient to pay the remaining claims of this class which are not yet passed upon by the Appraisers.

The amount of revenue derived from the Onondaga Salt Springs during the past year, was about fifty-six thousand dollars, or one cent per bushel, on an inspection of about five million six hundred thousand bushels, a reduction

[5] By chapter 326, passed April 20, the insurance law was amended in several particulars, embracing in substance the suggestions made in the message.

from the inspection of the previous year of more than a million of bushels. The improving quality of the article, is procuring for it a more extended market, and, if the reasonable expectations of those who are the most conversant with it are not disappointed, the business of the present year will exceed that of any previous one.

In September last, I visited the Reservation, and had an opportunity of personally examining the salt works. When fully developed and the whole property of the State at that point brought into use, I cannot but believe that the income from this source will be largely increased. The State now owns about one thousand acres, estimated, together with the appurtenances, to be worth at least two million of dollars, and the Salines themselves are of incalculable value, yet, as will appear from the following statement, they have for a number of years past averaged a net income of only about three-quarters of one per cent, on their estimated value. The net receipts for

Five years ending with Sept. 30, 1850, were...	$113,449.67
Five years ending with Sept. 30, 1855, were...	92,324.15
Five years ending with Sept. 30, 1860, were...	28,220.82
Aggregate net receipts for fifteen years.....	$233,994.64

Average net annual receipts during fifteen years, $15,599.64. Legislation has unwisely reduced the duties on this important staple. Were the consumption of salt confined exclusively to our own State, it would be a matter of less importance whether the revenue from duty was larger or smaller, but when it passes our own borders, as five-sixths of it does, the unreasonably low tariff operates unjustly upon the people of this State. In view of which, I recommend that the duty be increased to two cents per bushel.

The annual report of the Commissioners of Emigration

will be duly submitted to you. To that I refer you for important statistical information and interesting details connected with the institutions under charge of that Board. During the year 1860, the emigrants arriving at the port of New York numbered one hundred and four thousand three hundred, being an increase of more than twenty per cent. over the two preceding years. The Commissioners have suitably altered one of the present hospital buildings for a lunatic asylum, and have it nearly ready for the reception of insane emigrants. The responsible character of the duties of the Commissioners render it necessary for them to examine personally into the affairs connected with the institutions on Ward's Island and at Castle Garden; and they are, therefore, enabled to speak understandingly respecting these establishments. It is worthy of remark, that the Commissioners receive no salary, or other pecuniary considerations, for their services.

No provision having been made by the Legislature for obtaining a new quarantine station, the commissioners for its removal have been unable to accomplish anything towards a permanent establishment. The seasons of 1859 and 1860 were remarkable for their healthy character; hence no evil resulted from the absence of legislation on this subject. But experience admonishes us that such immunity cannot be relied upon with safety for another season. Common prudence and humanity alike demand that suitable measures be taken for the care and treatment, for the future, of yellow fever and other contagious diseases.

The floating hospital was anchored in the lower bay and prepared for the reception of patients on the 25th of June last. The force was placed in charge of an experienced and qualified physician. Fifteen cases of quarantine diseases, of which eleven were yellow fever, were treated; fourteen recovered and one died. On the last of October, the hospital being no longer required for the season, it was

placed in a winter berth at Red Hook. It is the opinion of the commissioners that the small-pox hospital at Blackwell's Island, and the numerous hospitals on Ward's Island, will afford all the accommodations required for quarantine purposes during the winter months. I think it would be right, and therefore recommend, that the quarantine commissioners be clothed with power to sell the property on Staten Island; and that sufficient means be placed at their disposal to procure a suitable location for a permanent quarantine hospital. It was for this purpose that the quarantine commission was created.

I recommend a revision of the laws with reference to Quarantine and the Commissioners of Emigration, not so much for the introduction of new provisions as for the purpose of explaining and reconciling existing laws. At present, duties are imposed upon the health officer and others, which involve considerable expense, while no provision is made for reimbursing them.

The provisions made by the law of 1859 for the care of the sick arriving at the port of New York, have relieved the physician of the Marine Hospital from a large portion of his duties, so that he can no longer render services proportioned to the salary of five thousand dollars, fixed by law for that officer. As the term for which the present incumbent was appointed will expire before your adjournment, and deeming it unnecessary that a new appointment should be made, I would recommend the abolition of the office and the distribution of its few remaining duties among other officers.

The commissioners under the act of April 16th, 1860, for ascertaining and collecting the damages caused by the destruction of the Marine Hospital and other buildings and property at Quarantine, on Staten Island, met in June last, and spent several weeks in a careful and rigid examination of the claims presented for their consideration. They

certify that the damages sustained to the hospitals and other property of the State by fire, in September, 1858:

Was	$194,402.50
Interest on same to date of award	12,848.29
	$207,250.79
Damages to personal property of the State	12,628.70
Interest on last	1,718.90
Total award to the State	$221,598.39

The value of the property of individuals destroyed at the same time, and whose loss was inquired into, amounts to about $8,115.

The supervisors of the county of Richmond, at their meeting last month, resolved to accept the foregoing award of the commissioners, and it is presumed they will proceed at once to issue the official bonds of the county to pay the damages as authorized by the act. These bonds are to be repaid in ten years, with interest annually, by assessing and collecting from the taxable property of the county, each year, one-tenth part of the principal, with the accrued interest.

The award for individual losses is payable from the county treasury, in the same manner as any other county charge, whenever the moneys shall be raised by taxation for that purpose.[6]

The board of equalization, created by the act of April 14th, 1859, composed of the Commissioners of the Land Office, and the State Assessors, have collected important facts regarding valuations throughout the State, enabling them to make a more equal apportionment of taxes among

[6] Chapter 37, passed March 4, appropriated $4,300, to be paid by the county of Richmond for the services and expenses of the commission appointed by the act of 1860, to ascertain and report the damages caused by the destruction of the quarantine buildings on Staten Island.

the several counties than hitherto. At best, however, our present mode of assessing property is found to operate unequally. To remedy this, it is believed there should be a revision of the existing laws on the subject.

The organized portion of the militia of the State, comprises nineteen thousand four hundred and thirty-five officers and men, uniformed, armed and equipped, and for the most part in a creditable state of discipline. The unorganized portion of the militia, or that part which is required by law to be enrolled, as liable to be drafted into service in case of insurrection or invasion, comprises, by estimate, four hundred and fifty thousand men, making the disposable force of the State amount in the aggregate to at least four hundred and sixty-nine thousand four hundred and thirty-five officers and men.

Though I trust it may never be necessary to employ this strong arm for any unfriendly purpose, yet "a well regulated militia is necessary to the security of a free people," and to maintain such an organization is a part of the established policy of our country. The "right of the people to keep and bear arms" is one secured to them by the Federal Constitution.[6] Although fully enjoying our liberties, it is the dictate of prudence that the military spirit of our State should continue to be fostered. Ever ready in the past to defend their institutions, we have, for the future, in our citizen soldiery, a pledge of domestic security, and of safety from external violence.[7]

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6 U. S. Const. 2d. am.

7 Chapter 277, passed April 15, authorized the Governor, Lieutenant-Governor, Secretary of State, Comptroller, Attorney General, State Engineer and Surveyor, and State Treasurer, or a majority of them, to provide for the enlistment and equipment of not more than 30,000 militia for two years, unless sooner discharged. The act provided for the election of officers, and for rules of discipline, pay and supplies, and declared that the militia when in active service should be subject to the regulations of the United States army. The act appropriated $3,000,000, and authorized the Comptroller to impose a tax of not more than two mills to meet the expenses incurred by the act.

The arsenals and armories of the State, those liberal contributions to the wants of our citizen soldiery, are, with a single exception, in excellent condition, and are occupied by the organized militia of the districts in which they are respectively located. The exception to which I allude is the Brooklyn arsenal, which, after a thorough examination by the Commissary General and a number of scientific and military gentlemen, was condemned as unsafe, and the use of it for drilling absolutely prohibited. The report of the Commissary General will be presented to you in a few days, and will contain information and suggestions upon this subject, as well as upon others, which will be found to be important as connected with the military department.

The Metropolitan Police has steadily grown into popular favor, and now commands general approbation. At the last presidential election, an occasion when every unruly element of the populace has usually had full sway, so peaceful and orderly were the streets, and particularly the polling places, that the police won the unqualified approbation of all good citizens. The act of last winter reduced the number of commissioners from seven to three, enlarged their powers and conferred upon them new and important duties. The police district comprises the counties of New York, Kings, Westchester and Richmond, and the towns of Jamaica, Newtown and Flushing, in the county of Queens. The area of territory embraced in the district is nine hundred and twenty square miles, with an estimated population of one million four hundred thousand. The force consists of a superintendent, four inspectors, thirty-two captains, one hundred and forty-three sergeants, and sixteen hundred patrolmen. The supervisors of the county of New

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Chapter 292, approved April 17, made a further appropriation of $500,000 to be used in arming the militia.

On the 15th of April the President issued a proclamation calling for 75,000 troops. New York's quota was 13,000.

York have recently authorized four hundred additional patrolmen for that city. In the city of New York there is one policeman to six hundred and fifty inhabitants; in Brooklyn, one to thirteen hundred and eighty. In European cities the relative number of policemen is much greater. The services rendered by the different departments of the police in enforcing the law for the suppression of liquor selling and theatrical exhibitions on Sunday; in inspecting the safety of ferry boats and manufactories; the condition of tenement houses, and the cleanliness of slaughter-houses, to which, in a large degree, must be ascribed the exemption of New York from diseases incident to hot weather, and in reporting and causing to be taken down or repaired all unsafe buildings, together with the ordinary patrol and detective duty, entitle the force to the designation of guardians of the public morals, health and order. Another important service performed by the police is that of the examination of boilers. Many of these have been found in an unsafe condition, and experience has demonstrated that the duty of inspection can be performed by the police more thoroughly and economically than by an independent board of inspection. No precaution will prevent occasional accidents from steam boilers, yet authority should exist for compelling the observance of such proper regulations on this subject as will protect life and property. It is probable that some amendment of the police act in this regard will be required, as well as in respect to the power of compelling the payment of the expenses of purifying tenement houses, and also in other matters of minor details. The report of the commissioners, which will be duly submitted to you, contains much important information, as well as many valuable suggestions and recommendations affecting the public welfare, and I commend it to your most serious and careful attention.

The Board of Commissioners of Pilots have continued during the past year to discharge the duties imposed upon

them, although the Legislature of last winter made no provision for the expenses incident thereto. The necessity of protecting the wharves and piers of New York from misuse and incumbrance, and the waters of the harbor from encroachment, is too obvious to require argument. The vigilance of the commissioners has prevented, to a great extent, the practice of throwing forbidden articles into the waters, the improper discharge of cargoes and incumbering of the wharves and piers. They have caused the removal of several sunken vessels, which have endangered navigation. But among the most important acts of the board has been the removal of a portion of pier number fifty-one, North river, which extended twenty-nine and a half feet beyond the pier line, as fixed by law, and was constructed after the line was established. Great credit is due to the commissioners for the prompt, efficient, and fearless manner in which they have discharged the responsible duties devolving upon them in procuring from the courts a perpetual injunction restraining the completion of the unfinished pier south of pier number one, North river. An appropriation should be made for the proper charges of the commissioners.[8]

Chapter 510 of the laws of 1860, created in the city of New York, the department of public charities and correction, and abolished the almshouse department. The commissioners, four in number, appointed by the comptroller of that city, have reorganized the establishments under their charge. They recommend several amendments to the laws, to enable them more effectually to accomplish the objects of their appointment. It is claimed by them that much injustice is occasioned by the operation of those laws which except the county of New York from a distributive share of the commutation moneys paid by ship-owners, masters or consignees, although that county is obliged, like all the

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8 Chapter 201, passed April 13, appropriated $5,400 for the expenses of the pilot commissioners.

others, to support its share of the foreign poor; and that, in exempting the Commissioners of Emigration from supporting those persons or passengers who have been absent from the State more than one year, the county of New York, for obvious reasons, becomes unjustly burdened. Under the present system of commitments, by the police courts, to the institutions on Blackwell's Island, for intoxication, the same party may be and often is committed fifty, and in some instances seventy-five times within a very brief period. The sentences of the offender are from two to ten days, a period just long enough to enable him to rest in his revolutions, recover his sobriety, partake of the hospitalities of the prison, and then go forth, certain only to gravitate again to his friendly quarters. Although fully aware of the vagrant character of many of the persons so frequently sentenced by them, the police magistrates have no power to commit for vagrancy, an offence not proven, nor indeed, even alleged against those so regularly brought before their courts. A conviction on this charge would procure for these persons much longer sentences, and would serve, in a great measure, to cure the evil complained of; and it is submitted whether it should not be made the duty of some officer to attend the police courts in the character of public complainant against this class of offenders.

I think some amendments are necessary to chapter seventy-two of the laws of 1850, relating to the harbor masters of the port of New York. The defect of the law is found to be in not prohibiting harbor masters from employing assistants to perform their duties, and from absenting themselves from their posts; and it is believed that these subordinates, to some extent, exact and receive illegal fees for berthing vessels. Stringent provisions against the employment of assistants under any pretext whatever, and against demanding, receiving, offering or paying gratuities, should be adopted.

The commissioners of the Central Park of the city of New York, report the amount already expended by them in the purchase of land and improvements, to be $5,744,-798.74; and that the amount yet unexpended of the means authorized to be raised for the completion of the park, is one million and eight hundred thousand dollars. Although now held in much favor by all classes, yet the great importance of this noble undertaking will continue to grow in public esteem, and will be more and more prized from generation to generation. For the sake of efficiency it is suggested that the number of commissioners be reduced from eleven to five.[9]

The commissioners appointed by the act of April 3, 1860, to ascertain and mark the boundary line between the States of New York and Connecticut, in conformity with the survey of 1731, have been unable to agree with those on the part of the latter State. The various propositions made having been declined, and the joint commission failing to agree upon a basis, the commissioners for this State proceeded to run, and have run and marked a line, which is represented as being satisfactory to the people on both sides of the boundary, and have placed monuments at the proper points. Their report, presenting the details of their proceedings, will be transmitted to you, together with a communication from the Executive of Connecticut.

While the State should be exactly just, and while I should

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[9] A Central Park commission was created by chapter 771, passed April 17, 1857. The commission was to be composed of eleven members who were to hold office five years. The act of 1857 was amended in 1859 (chapter 349) by providing, among other things, that the commission should be composed of not less than seven nor more than eleven members. Commissioners then in office, and persons appointed to fill vacancies were to hold office for five years from the date of the original act, 1857.

By the amendment of 1861, chapter 88, passed March 27, the official term of commissioners then in office was extended five years from the expiration of the existing term, and they were authorized to fill vacancies in the commission. Commissioners were authorized to receive, for the benefit of the park, property by gift, devise or bequest.

be unwilling to counsel a withdrawal of its patronage from the several charitable institutions, which have hitherto enjoyed it, I would suggest the adoption of a more rigid system of accounting and economy. The doctrine of strict accountability should apply as well to our charities as to any other interest. I am sure that no valid objections can be urged against this by those into whose hands the interests of these important establishments are committed; since it will afford to the people a satisfactory guaranty that the moneys appropriated to those objects have a proper direction. I would recommend that all applications for aid to State institutions, beyond that for usual and necessary support, should be carefully scrutinized, for it cannot be denied, that while their ordinary affairs have been managed with care, large expenditures have sometimes been made for mere ornamentation. If we keep constantly in mind the fact that the taxpayer is charged with the care and support of the poor of his own locality, and, in addition, willingly pays all that is required of him for these general purposes, applications for aid will be more carefully considered; and, by limiting the amount only to actual wants, we may be less liberal, but more just.

The New York Institution for the Deaf and Dumb is successfully accomplishing the important work assigned it. As respects educational efficiency, extent of accommodations, and the number of pupils, it is nowhere surpassed. The building is an imposing structure, built at a large expense on Washington Heights. The present number of pupils is three hundred and three, of whom two hundred and fifty-two are beneficiaries of this State, and thirteen of New Jersey, and thirteen are paying pupils from other States. The buildings are designed for four hundred and fifty inmates. The annual cost to the State for educating each of its pupils is one hundred and fifty dollars. The proportion of mutes to the population of the State is estimated to be as one to two thousand, and, estimating the

number of inhabitants of New York at four millions, it would appear that but about one-seventh of the mutes of the State are enjoying the advantages of the institution.

The New York Institution for the Blind had in charge, on the 3d of December last, two hundred and ten pupils. A charity which extends the hand of instruction to a class so helpless as the blind, is entitled to the sympathy of all. It is gratifying to know that a large proportion of the graduates of this institution are capable of earning, and that many of them do earn, their own support in after life. The course of education consists of instruction in the ordinary English branches, and in some suitable industrial pursuit.

The Asylum for Idiots, located at Syracuse, is evidently accomplishing all its originators predicted. During the past year new methods of instruction, improvements in the system of management of the pupils, and the conduct of the household, have been introduced; and greater attention has been given to industrial education. The farming operations, accomplished principally by the labor of the larger boys, have been quite productive, and a branch of mechanical labor has been successfully tried. There were connected with the institution, during the past year, one hundred and forty pupils, of a class of children known to be peculiarly subject to bodily ailments, yet no death, nor hardly a case of sickness, occurred.[10]

The Inebriate Asylum is approaching completion. Already three-fourths of the mason work is finished in a substantial manner. The building is to be so constructed as to accommodate four hundred patients. Four thousand two hundred and eighty-one applications have been made for admission to the institution when completed; and it is an interesting fact that these are confined to no

[10] Chapter 248, passed April 15, appropriated $10,000 for the purchase of about thirty-five acres of additional lands for the Asylum for Idiots. See 1851, note 6, *ante*, vol. 4, p. 555.

locality, but have come from every State in the Union, and from almost every town in our own State. Every reasonable encouragement should be given to test the efficacy of the experiment proposed by the friends of this institution.[11]

The managers of the House of Refuge, at Randall's Island, in the city of New York, received about one thousand children during the year 1860; and there are now in the House about five hundred and fifty, of whom, one hundred and five are girls. The building for girls is completed, and has been occupied since February last. The delinquents of both sexes are now classified; the younger and less vicious children are, under the present plan, kept from all communication with the more corrupt. Each class has its own workshop, schoolroom, play-ground and dormitories. The discipline of the institution is thus more easily maintained, and the improving influences are brought to bear more directly upon each inmate.

The Western House of Refuge, located at Rochester, was opened in August, 1849. Thirteen hundred and ninety-seven delinquents in all have been sentenced to that institution; of which number there were received, from the first of January last, to the latter part of November, one hundred and thirty-six. One hundred and forty-five, have been discharged during the year, five escaped, and three have died; and on November 22d, four hundred and nine remained.

Closely connected with the growing healthiness in the public finances, is our agricultural prosperity. Underlying, as does this great interest, the material progress of the country, and the advancement in the arts of civilization, everything relating to our political economy is neces-

[11] By chapter 65, passed March 21, the trustees of the New York State Inebriate Asylum were authorized to borrow $60,000 for ten years on bonds secured by a pledge of the asylum property, the proceeds to be used in building the asylum.

sarily graduated by it. We are poor or rich as our agricultural productions are meagre or bountiful. This pursuit, engaging nearly or quite one-half of the population of the State, sets in motion the wheels of internal commerce and crowns with plenty and happiness, the homes of our people. So thoroughly is the agriculturist coming to understand the principles of cultivation in the employment of fertilizers, which science proves to be peculiarly adapted to his soil; in providing himself with implements of husbandry specially fitted to his use; in feeding his herds with those articles most conducive to their growth and improvement, that he spares himself in toil, and is blessed with increased return for his labors. And although it has not reached its highest development, agriculture has made great advances, and a broad and permanent foundation is laid for the more perfect structure.

Nearly a quarter of a century ago a plan for an agricultural school was discussed, and measures, looking towards establishing one, were taken. Nothing material, however, was effected until the winter of 1853, when a charter was obtained for the New York State Agricultural College, located at Ovid. Three years later the Legislature authorized a loan of $40,000 to it from the State Treasury, on condition that a like sum should be raised by private subscription. This was promptly done, and the work of constructing the necessary buildings was at once entered upon. Although Europe has a large number of educational establishments devoted to agriculture and adjunct sciences, this college is among the first of the kind established in this country. It is now nearly or quite ready for the admission of pupils.

The People's College at Havana, in Schuyler county, is not yet completed, though the main building, an imposing structure, is inclosed, and the work upon it progressing. The institution promises important advantages to those for whom it was designed, from which class over three

hundred applications for admission have been already made.

A remedy is seriously demanded by the public for the embarrassments occasioned by the inability of the courts, especially the Court of Appeals, and the courts in the city of New York, to dispose of the business before them. A difficulty striking so directly, as does this, at that cardinal doctrine of our government, that justice shall not be deferred,* is worthy of your most careful attention.

The law of 1860, entitled "An act concerning the rights and liabilities of husband and wife," involves changes, the extent and radical nature of which could not, I think, have been fully comprehended by its framers. To these I invite your careful attention.[12]

I would again urge the importance of requiring each county to pay the cost of the transportation of its own convicts to State prison. The abuses which exist in connection with this service can be remedied in no manner so well as to place the accounts open to the personal inspection of the taxpayers. This course would not be simply a change of the burthen from the State to the county treasury, where it properly belongs, but would actually lessen the total cost to a very material degree.

I called the attention of your immediate predecessors to the necessity of authorizing boards of supervisors to audit and pay the proper accounts of agents employed, under direction of the county authorities, to execute requisitions of the Governor for the return of fugitives from justice.

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* See *Magna Charta*, art. 40.

12 The married woman's act of 1860, chapter 90, was not amended at this session, but the next year, 1862, it was amended in several particulars by chapter 172, passed April 10, among others, repealing the provision requiring the husband's consent to his wife's conveyance of real property, also repealing a provision giving the county court power to authorize the wife's conveyance in case of the husband's refusal. The new act vested in the wife full power to convey her real property in the same manner as if she were unmarried.

A duty so peculiarly belonging to the local police, should not become a charge upon the State treasury; and so long as it thus remains, abuses of a serious character will exist. Experience shows that when compelled to undergo the scrutiny of the supervisors, to whom generally, the facts of each case are known, improper charges are far less frequent, and journeys to other States undertaken under pretence of pursuing alleged fugitives, though in some cases for other objects, will be much less likely to be made at the public expense.

The last Legislature passed, at a late period of its session, a bill known as the "Insolvent Bill," from which, on a careful examination, I was compelled to withhold my approval, in consequence of manifest defects, resulting, undoubtedly, from the haste in which it was drawn, and urged through the forms of law. The principle on which it was founded, that the honest, but unfortunate debtor, who gives up to his creditor all his property, should be discharged from his obligations, is, I believe, both wise and equitable; but a law which shall carry out this principle, should be well matured, should contain properly guarded and stringent provisions against fraud, and should except from its operation, trustees, executors, and others acting in a fiduciary capacity. The law of the last session was defective in all these respects.

The Governor is required to certify to the correctness of certain accounts about which he can know little, and yet his certificate serves to shield them from the scrutiny of the financial officer of the State. These should be placed on the same footing as other claims upon the treasury.

The rights of persons accused of crime are not, it appears to me, now sufficiently protected. To remedy this it has been proposed to create, in the city of New York at least, an office, the incumbent of which shall be charged with the duty of defending those who are unable to provide themselves with counsel. If it is deemed best not to

adopt this remedy, it should at least be required that the counsel assigned by the court should have sufficient time and inducement to prepare the defence.[13]

We claim that through the ballot box we obtain the popular verdict on political subjects; that by it we are enabled to make choice of such persons as will most nearly represent the public judgment. To preserve it from fraud or improper influences, is, therefore, the highest duty of a State, and efforts have been made, from time to time, to throw around it such protection as experience has shown to be necessary. Among the safeguards is the registry law, which has been of signal value in removing one class of evils. Its success only demonstrates the necessity of a still closer examination, to ascertain if other wise and proper measures may not be adopted to save the priceless gift of suffrage to those only who are justly entitled to exercise it.

Permit me to call your attention to the fact, that the expenses of the Legislature have largely increased within a few years, and that they can be essentially curtailed without detriment to the public interests. I do not believe that either the dispatch of business, nor the convenience of members, requires so large a number of employes.

I do not consider it necessary to repeat at length the views presented by me in former messages, in regard to the following subjects, but simply desire to say that reflection and observation have only served to confirm the opinions therein expressed; and I therefore renew, and would respectfully refer to these several recommendations, to wit: That aliens actually residing in this State be authorized to acquire, hold, and convey real estate at their pleasure; that females convicted of crimes, involving im-

[13] The first provision for compensation to defendant's counsel in criminal cases was made by an amendment in 1893, chapter 521, to section 308 of the Code of Criminal Procedure. The compensation was limited to cases where the offence was punishable with death, and by an amendment in 1897, chapter 427, the amount was limited to $500.

prisonment for brief periods, should be sent to the penitentiaries instead of the State prison; that measures be taken to secure from Congress the means for the prompt completion of the defences of the harbor of New York; that the number of railroads in the upper part of the city of New York be increased; that a careful attention be given to the subject of public health, especially in the city of New York, and particularly to providing the necessary scientific sanitary supervision; that it be made the special duty of some officer to enforce the law of April 12, 1853, providing for the care and instruction of idle and truant children; that a revision of the laws applicable to breaches of trust in various forms, and to persons acting in fiduciary capacities, has become necessary; that power should be given to the governor to suspend for misbehavior, during the recess of the Senate, all officers where removal or suspension is not otherwise provided for; that village charters are filled with minute details which might be comprehended in a general act applicable to all but exceptional cases; that a law be passed requiring the courts to put trustees in possession of those railroads which fail to pay the interest on their mortgage debts, and to require railway companies to maintain their road beds and bridges in such condition as to insure the safe transportation of passengers over them; that by extending the powers of boards of supervisors, the convenience of the people would be promoted, and the time of legislation saved.

Since the adoption by the city of New York of the present charter, the vast increase of the population, and the multiplied changes which have occurred in the institutions and in the political relations of that city, seem to render it well worthy of your consideration, whether a commission should not be appointed whose duty it shall become to prepare, during the present year, and to present for submission to the electors of that city at the next general election, a new charter; and, if approved by them,

then the officers named in such charter to be chosen at the city election in December following. The act should name the commissioners; they should all be residents of the city of New York, and should be selected with especial reference to their fitness for the position, and should be taken from the several political parties.

Our public works, now just reaching their fullest efficiency, constitute but a link in that comprehensive chain which stretches from the eastern seaboard to the western confines of Missouri and Iowa. In view of the expansive nature of our commerce, which now so clearly demands the immense facilities it would afford, we cannot but feel that the time has fully come for completing that system of inter-communication now, in part, so successfully inaugurated; and, to that end, to regard with yet greater favor the question of a speedy construction of a continental railway. Thus, while meeting the demands of a business age, we shall more closely and more indissolubly cement the Atlantic and Pacific States. It is not for the authorities of New York to prescribe the particular mode nor route by which the general government may most speedily secure the completion of a work so worthy the genius of our people, and so important to the material interests of the whole country; but so directly are her citizens interested in the enterprise, that we may with propriety express the hope that Congress will take the earliest measures for its accomplishment. If, in providing a line leading from the more northern sections of the Union, Congress should deem it just to adopt a similar degree of favor toward a more southern line, connecting the Pacific with the States adjacent to the Gulf of Mexico, I need hardly express the assurance that the people of New York will rejoice in the prosperity which the completion of such a line would inevitably secure to that portion of our common country.

As required by the Federal Constitution,[h] the eighth

[h] U. S. Const. art. 1, § 2, clause 3.

general census was taken last year. Its results will form the basis of a new apportionment of representation throughout the Union, and consequently a rearrangement of the congressional districts in this State. I am indebted to the courtesy of the superintendent of the Census office, at Washington, for the following statistics, derived from this enumeration, which, although incomplete, enables that officer to state that they will prove substantially correct. The population of the State of New York numbers about three million eight hundred and twenty-seven thousand; the federal or representative population of the several States, about twenty-nine million four hundred and thirty-nine thousand. In every case these estimates will be changed somewhat by the official figures.

The free population of all the States will number about	27,112,000
Slave population	3,878,000
Population of the Territories, Kansas included	384,856
Or a total population of about	31,374,856
Population, according to census of 1850	23,191,074
Increase in ten years of about	8,183,782

The increase of population in this State since 1850, is about 730,000; since 1855, is about 361,000.

The population of Kansas, including Pike's Peak, is about 143,600.

In the absence of detailed official statistics, I can only remark, that, from unofficial sources, it appears the increase of population in this State is confined principally to our commercial centers; and that, notwithstanding the pecuniary crisis of 1857, our industrial resources have largely augmented, as shown by a comparison with the

State census of 1855. It is apparent, also, that the agricultural returns indicate a highly prosperous condition.

The year 1860 will occupy an important place in our national history. The events which have distinguished it are not only unusual, but are of a character likely to produce permanent effects upon our commercial and political relations. They have served to show how favorably our policy has impressed even distant empires; how important a relative position we occupy among the great family of nations; and how strong, and, at the same time, how erroneous, are the prejudices which have been engendered in some sections of our common country against other sections. First, in point of time, was the Embassy from the Emperor of Japan; and it is a fact of much interest, that this was the first formal Embassy ever sent to any western nation. The singularly exclusive policy of the Japanese has hitherto prevented that intercourse which the standing of their nation fairly entitled them to. With a population greater than our own, a country everywhere cultivated, a people among whom education is universal, possessing the most substantial elements of wealth, of industry, of adaptability, of refinement, of intelligence, of probity and virtue, whose laws are administered with rigorous impartiality, and who are hospitable and open-hearted, the empire of Japan, from studious unwillingness to open its commerce to the world, has been but little known. From the eagerness with which the Japanese examined our mechanical and other industrial establishments, and the quickness they evinced in appreciating their advantages, the visit will produce some effect upon their own advancement; while, from the evident satisfaction and kindly feeling manifested by them, we cannot doubt that some of the barriers to commerce, which have so long existed, will be removed, and that our country will be largely benefited by the visit of the Embassy.

The visit of the Prince of Wales was signalized by our

neighbors, the subjects of her Britannic Majesty, with every indication of loyalty and enthusiasm. His route, from the moment of his entry to his exit, was one prolonged ovation. Representing in those dominions the regal authority, he was justly entitled to the attention shown him; but on passing into the territory of the United States, he dropped this character, and came among us as Lord Renfrew, and without pride or ostentation received the voluntary honors of a nation upon whom he had no other claim than belongs, by international courtesy, to every distinguished foreigner who visits our country. The cordiality, as well as the universality of respect shown him, were the manifestations of our regard for the British nation, and an earnest of our appreciation of the courtesy intended by his visit, enhanced, if possible, by our respect for the present sovereign of that empire, whose womanly virtues have won the esteem of the American people. If there existed anywhere in this country a feeling of unkindness, a relic of the struggles between the two nations, this visit has dispelled it. The ties of friendship have been strengthened between nations of a common kindred and a common language. The citizens of New York, identified, as are their interests, with those of Great Britain, and her American possessions by intimate commercial relations and contiguity of territory, should especially regard the visit with favor.

Discontents must sometimes arise, even in a free government, and occasional misunderstandings are incident to every confederacy. The formal proceedings of persons in some of our sister States, with the avowed purpose of dissolving the Federal Union, is nevertheless a subject of painful apprehension, and so imminent has the danger been felt to be, that the business affairs of the country have been deranged, and the public mind greatly perplexed.

The complications which environ the question of a speedy adjustment of existing national difficulties, are not

the results of any new and unexpected causes, but are the slow growth of a generation. The events of the past year, among which is the significant disruption of the Charleston Convention, in April last, have served to produce a more general conviction, that there exists an active and influential class of politicians at the south deliberately conspiring to destroy the American Union, and to construct from the ruins a southern confederacy. While many have believed that the frequent manifestations of discontent among our southern brethren, had their origin in real or fancied wrongs on the part of the north, and have been willing to give a sympathetic ear to those complaints, they are not disposed, now that it is more apparent that secession has been contemplated for years, to encourage an attempted destruction of the government upon mere declarations, unsupported by evidence.

But I do not question the sincerity of all who threaten secession; on the contrary, I accept the declarations of many as those of earnest and determined men; and while I have faith that time will essentially modify their views, change their purposes and prevent them from rushing madly to inevitable destruction through the paths of treason and civil war, ordinary prudence dictates that this patriotic commonwealth should not hold a position of apparent indifference, but that we should deliberately consider our relations to the questions of proposed secession, as well as the duties which such an event may force upon us. Believing that as this confederacy had its origin and consummation in mutual sacrifices and benefits; that it is based upon a solemn compact to which the whole people of the United States were parties, and by which all are firmly bound, and that this compact provides for a peaceful redress of fundamental grievances, it is clear, that without a disregard of mutual engagements, no State can voluntarily secede from the Union. A separation of one or more of the States, though called secession, and claimed to be

lawful under rights erroneously supposed to have been reserved to the States, can, nevertheless, be practically nothing else than disunion, and disunion, so soon as it shall take its needful form and proportions, must reveal itself in the character of treason, which it will be the high duty of the General Government to arrest and punish. The laws of the United States must be executed; the requirements of the Constitution must be obeyed. If the National Government is to exist, its power must be adequate to the enforcement of its laws in any of the States of the Union, and under any circumstances. To permit or acquiesce in a treasonable conspiracy against the national authorities, is to confess that our government is an absolute failure. The people of the State of New York, in my judgment, are not prepared for such an admission; on the contrary, they will give to the Federal authorities, in the adoption of all wise, just and necessary measures for the enforcement of the laws, their earnest, faithful and constant support.[14]

Although strenuously opposed to the establishment of the compromise line of 1820, yet, as the settlement of the then existing difficulties, New York, and the north generally, acquiesced; and, for the third of a century, were content to regard as sacred a compact, inuring largely to the advantage of the friends of slave-labor. The ordinance of 1787 had consecrated to free-labor the whole of the northwestern territory, and, in process of time, the rapid stream of emigration had organized it into States. In the meantime, southern society, being less expansive, the north, by natural causes, acquired a preponderating influence in the national councils. The territory west of the Mississippi and north of 36 deg. 30 min., was still unoccupied, seeking to preserve its political power, and in spite of its plighted faith, the south determined to remove the barrier to the introduction of slavery to this section, and to occupy it.

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[14] See special message of January 17, for resolutions tendering State's aid to federal government, and President Buchanan's acknowledgment thereof.

The facts connected with the abrogation of the Missouri compact, are too recent and too well known to require detail; but from the hour in which the rights of the north were thus invaded, sectional disagreements have been growing wider and more intense, until the fair fabric of the Union is seriously threatened.

Not desiring the adoption of the Missouri line in 1820, and opposing, with almost solid front, the weight of her influence to the repeal in 1854, this State does not ask, nor does she desire the restoration of that line. After full and free discussion, her people have declared against the extension of slavery into any of the territories, and this they regard as a disposition of that question until revoked by the same authority. Ever ready, nevertheless, as she has proved herself heretofore, New York will, in all honorable ways, endeavor to reconcile the estrangements now existing in the country.

A magnanimous and loyal State, in such an exigency, may well forego the question whether assumed grievances are real or only imaginary; but while her action should be marked by patience, calmness, conciliation and fraternal affection, there should be no surrender of important rights, nor sacrifice of vital principles. It is equally clear she should not insist on points of pride, or on mere abstractions.

Though brought forward under misapprehension, one such grievance is alleged against this State. In 1840, conformably to the generally received opinion of that day, the Legislature passed a statute granting a trial by jury, in the courts of this State, to persons charged as being fugitives from service. Afterwards, the supreme court of the United States in the case of Prigg against the commonwealth of Pennsylvania,[1] decided that all State laws, even though subordinate to the federal enactments, and favorable to the extradition of fugitives, were inconsistent with the Consti-

[1] 16 Pet. 539.

tution of the United States, and therefore void;[14] and so this statute of our State, which granted a trial by jury, became ineffective. It has been universally held to be obsolete by all our commentators, and all our public authorities, though now improperly classed among what are technically called "personal liberty laws," and made occasion for exciting jealousies and discontents. I therefore recommend its repeal.[15]

In this connection, and while disavowing any disposition to interfere with what exclusively pertains to the individual States, and in a spirit of fraternal kindness, I would respectfully invite all those States which have upon their statute books any laws of this character, conflicting with the Federal Constitution, to repeal them at the earliest opportunity; not upon condition that a more equitable fugitive slave law be passed, nor upon any other conditions, but relying for the proper modification of this enactment upon the justice and wisdom of the federal authorities. Let the free States fulfill all the obligations of the Federal Constitution and laws, then, with propriety, they may exact like obedience from all the other States.

That the President and Vice-President elect, though constitutionally chosen, were unacceptable to a portion of the south, was the cause first avowed for secession. This ground, however, proving untenable as soon as assumed, the agitators fell back upon other alleged grievances and renewed their complaints with a view to exasperate and alarm the people of those States with idle and painful fears.

Every one knows, or may know, that the newly elected President and Vice-President, not only can have no motive

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[14] U. S. Const. art. 4, § 2, clause 3.

[15] For the act granting a jury trial to fugitive slaves, see 1840, note 12, 1841 special messages of March 26, April 14, and May 15. The act of 1840, chapter 225, was not repealed until 1880, when it was included in the general repealing act, chapter 245.

nor desire to do any injury to the complaining States, but that they will have no power to exercise for such a purpose.

The Senate of the United States is now controlled by the same political majority which has controlled it for the two last presidential terms; the House of Representatives, already chosen for half the term for which the President and Vice-President are elected, are of the same majority as the Senate; and the Supreme Court is practically the same as it has been for nearly a quarter of a century, and all the constitutional guarantees are in force now, as heretofore, against executive usurpations or sectional interferences.

While the question of slavery, throughout all history, has been a subject of debate, the record of the past will show that the people of the free States have remained content with the disposition of the subject made by the Constitution and federal laws, and have refrained from any political agitation of it until attempts were persistently made to extend the institution into the national domain, with a view, as we have seen, to increase the number of the slaveholding States. The alternative was now forced upon the Northern States, either of a ceaseless agitation of the subject of slavery, with a view to its removal even from the slaveholding States themselves; or else of resisting its introduction into the public domain through the intervention of the Federal Government. They chose the latter, and they have on all occasions proclaimed, and in the most solemn manner pledged to the slave states, the entire, absolute, and unquestioned control, regulation, management and disposition of slavery within their own borders. This is the position of the free States to-day, as it always has been; and the convictions and sentiments of the whole people, save those of a mere fraction, are in harmony with it.

Angered by private griefs, or at what they have deemed an unjust fugitive-slave act, a few inconsiderate persons of Northern States have made either actual or seeming aggressions upon the rights of the people of the slaveholding

States. This, of course, has been met by the people of the latter, in a temper and spirit hostile and retaliatory, as might have been expected. Vindictive laws have been passed by them, and peaceable and unoffending citizens, of northern birth, have been degraded or banished by southern communities and authorities.

What is especially wanted, both at the North and at the South, is not only a cessation of hostile words and acts, but a complete restoration of all those amicable and fraternal relations, which formerly existed in every portion of the confederacy, and without which the Union ceases to confer its highest advantages.

No apprehension, however, need be entertained that the people of this law-abiding State would, in any case, suffer their authorities or agents in the State or federal government, to invade or impair any constitutional right or privilege of the slave States; on the contrary, they stand always as ready to guaranty those rights as to defend their own; and I think it would be well for the Legislature to give such new and solemn utterances to these convictions as shall afford to the people of all the southern States the assurance that all their rights, under the Constitution and the laws, are recognized, and will, on the part of the people of this State, be respected and maintained inviolate.

I fully believe that if justice and moderation shall mark the conduct of the loyal States, we shall safely pass the present crisis, as we have passed many others, without loss of substantial rights or self-respect; for I am unwilling to admit that there are madmen, either at the north or south, sufficiently formidable in power or in numbers to destroy the union of the States; a Union which has been productive of inestimable good; a Union in which all sections and parts have contributed, in diverse though harmonious modes, to that common result of strength, stability and happiness, manifest to every eye, in every direction, throughout the length and breadth of this extended land.

In view, however, of the momentous questions involved, it becomes the solemn duty of the national Executive to act with promptitude and firmness; the national Legislature, with moderation and conciliation, and the public press throughout the country, with that regard to the rights of all sections and interests, which its vast influence and responsibilities demand.

Every State can do something, and ought to do all that it can to avert the threatened danger. Let New York set the example in this respect. Let her oppose no barrier; but, on the contrary, let her representatives in the Federal Legislature give their ready support to any settlement that shall be just and honorable to all, a settlement due alike to the cherished memories of the past, the mighty interests of the present, and the myriads of the future. Let her stand in an attitude of hostility to none; but extending the hand of fellowship to all, and living up to the strict letter of that great fundamental law, the living and immortal bond of the union of the States, cordially unite with other members of the confederacy, in proclaiming and enforcing the determination that the Constitution shall be honored, and the union of the States shall be preserved.

EDWIN D. MORGAN.

Albany, January 1, 1861.

SPECIAL MESSAGES.

January 3. To the Senate: Transmitting a report of the reprieves, commutations and pardons.

January 3. To the Assembly: Transmitting the annual report of the commissioners of the metropolitan police.

January 9. To the Assembly:

"ALBANY, *January* 9, 1861.

"I transmit herewith the annual report of the Commissary General. The facts contained in this document will

be found to be of some importance, and are well entitled to your consideration.

As will be seen, there exists a deficiency in the military stores, which I think the Legislature should take early measures to supply. In addition to this, I recommend that in order to meet any emergency which may arise you make a suitable appropriation from the treasury, to be used under the ordinary restrictions, at the discretion of the military department. [See note 7.]

E. D. MORGAN."

January 16. To the Assembly: Transmitting the annual reports of the commissioners of pilots, and of the Adjutant General.

January 17. The Legislature on the 11th adopted the following concurrent resolutions:

"*Whereas,* treason, as defined by the constitution of the United States,[k] exists in one or more of the states of this confederacy, and

Whereas, the insurgent state of South Carolina, after seizing the post office, custom house, moneys and fortifications of the federal government, has, by firing into a vessel ordered by the government to convey troops and provisions to Fort Sumter, virtually declared war; *and whereas,* the forts and property of the United States government in Georgia, Alabama and Louisiana, have been unlawfully seized, with hostile intentions; *and whereas,* further, senators in Congress avow and maintain their treasonable acts; therefore

Resolved, That the Legislature of New York, profoundly impressed with the value of the Union, and determined to preserve it unimpaired, hail with joy the recent firm, dignified and patriotic special message of the president of the United States, and that we tender to him, through the chief magistrate of our own state, whatever aid in men and money he may require to enable him to enforce the laws and uphold the authority of the federal government. And

[k] U. S. Const art. 3, § 3, clause 1.

that in defence of the 'more perfect union,' which has conferred prosperity and happiness upon the American people, renewing the pledge given and redeemed by our fathers, we are ready to devote 'our fortunes, our lives, and our sacred honor' in upholding the Union and the constitution.

Resolved, That the Union-loving representatives and citizens of Delaware, Maryland, Virginia, North Carolina, Kentucky, Missouri and Tennessee, who labor with devoted courage and patriotism to withhold their states from the vortex of secession, are entitled to the gratitude and admiration of the whole people."

These resolutions were duly sent to the President by Governor Morgan, who on the 17th transmitted to the Legislature the following communication from President Buchanan:

WASHINGTON CITY, *January* 14, 1861.

His Excellency EDWIN D. MORGAN, Governor of New York:

SIR.—I have had the honor to receive your communication, covering the resolutions which have passed the Legislature of New York on the 11th instant, "tendering aid to the president of the United States, in support of the Constitution and the Union," and shall give them that respectful consideration to which they are entitled, from the importance of the subject and the distinguished source from which they have emanated.

Yours, very respectfully,
JAMES BUCHANAN.

January 17. To the Assembly: Transmitting the report of the trustees of the State Agricultural College, and also the report of the Board of Commissioners for the Removal of Quarantine.

January 22. To the Legislature: Transmitting the following concurrent resolutions adopted by the Legislature of Ohio on the 12th of January:

"*Resolved,* by the General Assembly of the State of Ohio, as follows:

1. That the people of Ohio, believing that the preservation of the unity of government that constitutes the Ameri-

can people one people, is essential to the support of their tranquillity at home, of their peace abroad, of their safety, of their prosperity, and of that very liberty which they so highly prize, are firmly and ardently attached to the national constitution and the union of the States.

2. That the General Government cannot permit the secession of any State, without violating the obligations by which it is bound, under the compact to the other States, and to every citizen of the United States.

3. That whilst the constitutional rights of every State in the Union should be preserved inviolate, the powers and authority of the National Government must be maintained, and the laws of Congress faithfully enforced in every State and Territory, until repealed by Congress, or adjudged to be unconstitutional by the proper judicial tribunal, and all attempts by State authorities to nullify the Constitution of the United States, or the laws of the Federal Government, or to resist the execution thereof, are revolutionary in their character, and tend to the disruption of the best and wisest system of government in the world.

4. That the people of Ohio are inflexibly opposed to intermeddling with the internal affairs and domestic relations of the other States of the Union, in the same manner and to the same extent as they are opposed to any interference by the people of other States with their domestic concerns.

5. That it is the will and purpose of the people of Ohio, to fulfill in good faith, all their obligations under the Constitution of the United States, according to the spirit and intent thereof; and they demand the faithful discharge of the same duty by every State in the Union; and thus, as far as may be, to insure tranquillity between the State of Ohio and the other States.

6. That it is incumbent upon any States having enactments on their statute books, conflicting with, or rendering less efficient the Constitution or laws of the United States, to repeal them; and it is equally incumbent upon the General Government and the several States, to secure to every citizen of the Union, his rights in every State, under that provision of the Constitution which guarantees to the citizens of each State all the privileges and immunities of the citizens of the several States, and thus inspire and restore

confidence and a spirit of fraternal feeling between the different States of the Union.[1]

7. That the union-loving citizens of those States who have labored, and still labor with devotional courage and patriotism, to withhold their states from the vortex of secession, are entitled to the admiration and gratitude of the whole American people.

8. That we hail with joy the recent firm, dignified, and patriotic special message of the President of the United States, and that the entire power and resources of Ohio are hereby pledged whenever necessary and demanded, for the maintenance under strict subordination to the civil authority of the Constitution and the laws of the General Government, by whomsoever administered."

January 24. To the Legislature:

"ALBANY, *January* 24, 1861.

"I have received from the Governor of Virginia a copy of a preamble and resolutions, adopted by the General Assembly of that State, on the 19th day January, instant, a copy of which I herewith submit to your consideration.

As will be seen, an invitation has been extended 'to all such States, whether slaveholding or non-slaveholding, as are willing to unite with Virginia in an earnest effort to adjust the present unhappy controversies, in the spirit in which the Constitution was originally formed, and consistently with its principles, so as to afford to the people of the slaveholding States adequate guarantees for the security of their rights, to appoint commissioners to meet on the 4th day of February next, in the city of Washington, similar commissioners appointed by Virginia, to consider, and if practicable, agree upon some suitable adjustment.

It will also be seen that, with a view to give practical effect to its resolutions, the general Assembly of Virginia has appointed four eminent citizens of that State, as commissioners on her part.

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[1] U. S. Const. art. 4, § 2, clause 1; see also 14th am.

The great mass of the people of this State, and of the entire north, are actuated by an earnest desire that no honorable effort should be left untried to maintain, by peaceful means, the American Union, as it has existed for almost a century; and especially to encourage every exertion made toward an adjustment of existing differences by the loyal states.

Holding sentiments in full harmony, as I do, with these purposes, and with a view to the consideration of such measures as may eventuate in securing to the citizens of slaveholding and non-slaveholding States, such mutual guarantees as will fully protect the rights of each; I recommend the appointment of a corresponding number of citizens of this State, in whose character and patriotism the people shall have full confidence, with a view of meeting, in the same spirit which prompted these resolutions, the representatives of Virginia, and of such other States as may be there present, for the consideration of the objects indicated in the resolutions herewith submitted.

And it may not be improper, in the present threatening attitude of national affairs, to respectfully call your attention to the importance of every step taken in connection with our federal relations. Acting both as trustees of the past and guardians of the interests of the future, we should remember that history, holding us to our responsibilities, will record our acts, not with the hand of prejudice or of favor, but with calm impartiality. Let us, therefore, consider with care, our duty in the present emergency, and be ready to perform fearlessly and conscientiously, the duties which our respective positions have imposed upon us.[16]

E. D. MORGAN."

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[16] Early in February the Legislature, in response to Virginia's recommendation, adopted joint resolutions appointing David Dudley Field, William Curtis Noyes, James S. Wadsworth, James C. Smith, Amaziah B. James, Erastus Corning, Addison Gardiner, Greene C. Bronson, William E. Dodge, ex-Governor John A. King, and Major General John W. Wool, to attend the Washington convention.

THE VIRGINIA RESOLUTIONS, ADOPTED JANUARY 19, 1861.

Whereas, It is the deliberate opinion of the General Assembly of Virginia that unless the unhappy controversy which now divides the States of this Confederacy shall be satisfactorily adjusted, a permanent dissolution of the Union is inevitable, and the General Assembly, representing the wishes of the people of the Commonwealth, is desirous of employing every reasonable means to avert so dire a calamity; and determined to make a final effort to restore the Union and the Constitution, in the spirit in which they were established by the fathers of the republic; therefore,

Resolved, That on behalf of the Commonwealth of Virginia, an invitation is hereby extended to all such States, whether slaveholding or non-slaveholding, as are willing to unite with Virginia in an earnest effort to adjust the present unhappy controversies, in the spirit in which the Constitution was originally formed, and consistently with its principles, so as to afford to the people of the slaveholding States adequate guarantees for the security of their rights, to appoint commissioners to meet on the 4th day of February next, in the city of Washington, similar commissioners appointed by Virginia, to consider, and if practicable, agree upon some suitable adjustment.

Resolved, That ex-President John Tyler, William C. Rives, Judge John W. Brockenbrough, George W. Summers and James A. Seddon are hereby appointed commissioners, whose duty it shall be to repair to the city of Washington, on the day designated in the foregoing resolution, to meet such commissioners as may be appointed by any of the said States, in accordance with the foregoing resolution.

Resolved, That if said commissioners, after full and free conference, shall agree upon any plan of adjustment requiring amendments of the Federal Constitution, for the

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Mr. Gardiner declined to accept the appointment, and on the 8th of February, Thurlow Weed was appointed in his place, but he also declined. The place was afterwards filled by the appointment of Francis Granger.

See Senate Documents No. 59, 60, and 65 for reports and communications from the commissioners.

further security of the rights of the people of the slaveholding States, they be requested to communicate the proposed amendments to Congress, for the purpose of having the same submitted by that body, according to the forms of the Constitution, to the several States for ratification.

Resolved, That if said commissioners cannot agree on such adjustment, or if agreeing, Congress shall refuse to submit for ratification such amendments as may be proposed, then the commissioners of this State shall immediately communicate the result to the Executive of this commonwealth, to be by him laid before the convention of the people of Virginia and the General Assembly: Provided, that the said commissioners be subject at all times to the control of the General Assembly, or, if in session, to that of the State convention.

Resolved, That in the opinion of the General Assembly of Virginia, the propositions embraced in the resolutions presented to the Senate of the United States by the Hon. John J. Crittenden, so modified as that the first article proposed as an amendment to the constitution of the United States, shall apply to all the territory of the United States now held or hereafter acquired south of latitude thirty-six degrees and thirty minutes, and provided that slavery of the African race shall be effectually protected as property therein during the continuance of the territorial government, and the fourth article shall secure to the owners of slaves the right of transit with their slaves between and through the non-slaveholding States and territories, constitute the basis of such adjustment of the unhappy controversy which now divides the States of this Confederacy, as would be accepted by the people of this commonwealth.

Resolved, That Ex-President John Tyler, is hereby appointed by the concurrent vote of each branch of the General Assembly, a commissioner to the President of the United States, and Judge John Robertson is hereby appointed, by a like vote, a commissioner to the State of South Carolina, and the other States that have seceded, or shall secede, with instructions respectfully to request the President of the United States and the authorities of such States to agree to abstain, pending the proceedings contemplated by the action of this General Assembly, from any and all acts calculated to produce a collision of arms

between the States and the Government of the United States.

Resolved, That copies of the foregoing resolutions be forthwith telegraphed to the Executives of the several States, and also to the President of the United States, and that the Governor be requested to inform, without delay, the commissioners of their appointment by the foregoing resolutions."

January 29. To the Legislature:

"ALBANY, *January* 29, 1861.

"I submit herewith, the annual report of the Trustees of the Cooper Union for the advancement of science and art, which presents in detail, a statement of receipts and disbursements for the year 1860.

I am informed, by the secretary, that the printed report of the operations of the institution, will soon be ready for distribution to members of both branches of the Legislature.

The most casual reference to the items of expenditure in this report, is the best commentary on its usefulness; showing as they do, to what beneficent purposes the income of this munificent donation is applied.

E. D. MORGAN."

[See Assembly Document No. 36.]

February 1. To the Legislature:

STATE OF NEW YORK:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 1, 1861.

"In response to the joint resolutions of the Legislature of this State, adopted on the 11th ultimo, copies of which were immediately transmitted to the President of the United States and the Governors of the several States, I have received from the Governor of Tennessee certain joint resolutions adopted by the Legislature; and from the Governor of Virginia, a resolution adopted by the House of

Delegates, copies of which are herewith submitted. I have also received from the president of a convention of the people of Georgia, in convention assembled, a copy of a resolution which I submit herewith.

E. D. MORGAN."

TENNESSEE RESOLUTIONS, JANUARY 18, 1861.

"*Resolved,* by the General Assembly of the State of Tennessee, That this General Assembly has heard, with profound regret, of the resolutions recently adopted by the State of New York, tendering men and money to the President of the United States, to be used in coercing certain sovereign States of the south into obedience to the Federal Government.

Resolved, That this General Assembly receives the action of the Legislature of New York as the indication of a purpose, upon the part of the people of that State, to further complicate existing difficulties, by forcing the people of the south to the extremity of submission or resistance; and so regarding it, the Governor of the State of Tennessee is hereby requested to inform the Executive of the State of New York, that it is the opinion of this General Assembly that whenever the authorities of that State shall send armed forces to the south, for the purpose indicated in said resolutions, the people of Tennessee, uniting with their brethren of the south, will, as one man, resist such invasion of the soil of the south, at all hazards, and to the last extremity."

VIRGINIA RESOLUTIONS, JANUARY 17, 1861.

"*Resolved,* That the Governor of Virginia return the resolutions of the Legislature of New York to the Executive of that State, with the request that no such resolutions be again sent to this General Assembly."

GEORGIA RESOLUTION.

"*Resolved,* unanimously, in response to the resolutions of New York referred to in the Governor's Message, That this convention highly approves the energetic and patriotic conduct of Governor Brown, in taking possession of Fort

Pulaski, by Georgia troops, and request him to hold possession, until the relations of Georgia with the Federal Government be determined by this Convention; and that a copy of this resolution be transmitted to the Governor of New York."

February 1. To the Legislature: Transmitting resolutions adopted by the Legislature of Tennessee on the 22d of January, proposing amendments to the federal constitution:

"*Resolved,* by the General Assembly of the State of Tennessee, That a Convention of delegates from all the slaveholding States, shall assemble at Nashville, Tennessee, or some other place, as a majority of the States co-operating may designate, on the 4th day of February, 1861, to digest and define a basis upon which, if possible, the Federal Union and the Constitutional rights of the slave States may be perpetuated and preserved.

Resolved, That the General Assembly of the State of Tennessee, appoint a number of delegates to said Convention, of our ablest and wisest men, equal to our whole delegation in Congress; and that the Governor of Tennessee immediately furnish copies of these resolutions to the Governors of the slaveholding States, and urge the participation of such States in said Convention.

Resolved, That in the opinion of this General Assembly, such plan of adjustment shall embrace the following propositions, as amendments to the Constitution of the United States.

1. A declaratory amendment, that African slaves, as held under the institutions of the slaveholding States, shall be recognized as property, and entitled to the status of other property, in the States where slavery exists; in all places within the exclusive jurisdiction of Congress; in the slave States; in all the Territories south of 36 degrees 30 minutes; in the District of Columbia; in transit, and whilst temporarily sojourning with the owner in the non-slaveholding States and Territories, north of 36 degrees 30 minutes, and when fugitives from the owner, in the several places above named, as well as in all places in the exclusive jurisdiction of Congress, in the non-slaveholding States.

2. That all the Territory now owned, or which may be hereafter acquired by the United States, south of the parallel of 36 degrees 30 minutes, African slavery shall be recognized as existing, and be protected by all the departments of the Federal and Territorial Governments, and in all north of that line, now owned, or to be acquired, it shall not be recognized as existing; and whenever States, formed out of any of said Territory south of said line, having a population equal to that of a Congressional district, shall apply for admission into the Union, the same shall be admitted as slave States, whilst States north of the line, formed out of said Territory, and having a population equal to a Congressional district, shall be admitted without slavery, but the States formed out of said Territory, north and south, having been admitted as members of the Union, shall have all the powers over the institution of slavery, possessed by the other States of the Union.

3. Congress shall have no power to abolish slavery, in places under its exclusive jurisdiction, and situate within the limits of States that permit the holding of slaves.

4. Congress shall have no power to abolish slavery within the District of Columbia, as long as it exists in the adjoining States of Virginia and Maryland, or either, nor without the consent of the inhabitants, nor without just compensation made to such owners of slaves as do not consent to such abolishment. Nor shall Congress at any time prohibit officers of the Federal Government, or members of Congress, whose duties require them to be in said District, from bringing with them their slaves, and holding them as such, during the time their duties may require them to remain there, and afterwards take them from the District.

5. Congress shall have no power to prohibit or hinder the transportation of slaves from one State to another, or the territory in which slaves are by law permitted to be held, whether that transportation be by land, navigable rivers or by seas.

6. In addition to the fugitive slave clause, provide that when a slave has been demanded of the executive authority of the State to which he has fled, if he is not delivered and the owner permitted to carry him out of the State in peace, the State so failing to deliver shall pay to the owner the value of such slave, and such damages as he may have sus-

tained in attempting to reclaim his slave, and secure his right of action in the Supreme Court of the United States, with execution against the property of such State and the individuals thereof.

7. No future amendment of the Constitution shall affect the six preceding articles, nor the third paragraph of the second section of the first article of the Constitution, nor the third paragraph of the second section of the fourth article of the Constitution; and no amendments shall be made to the Constitution which will authorize or give to Congress any power to abolish or interfere with slavery in any of the States by whose laws it is, or may be, allowed or permitted.

8. That slave property shall be rendered secure in transit through, or whilst temporarily sojourning in, non-slaveholding States or territories, or in the District of Columbia.

9. An amendment to the effect that all fugitives are to be deemed those offending the laws within the jurisdiction of the State, and who escape therefrom to other States; and that it is the duty of each State to suppress armed invasions of another State.

Resolved, That said Convention of the slaveholding States having agreed upon a basis of adjustment satisfactory to themselves, should, in the opinion of this General Assembly, refer it to a Convention of all the States, slaveholding and non-slaveholding, in the manner following: It should invite all States friendly to such plan of adjustment to elect delegates, in such manner to reflect the popular will, to assemble in a constitutional Convention of all the States, north and south, to be held at Richmond, Virginia, on the day of February, 1861, to revise and perfect such plan of adjustment, for its reference for final ratification and adoption by a Convention of the States respectively.

Resolved, That should a plan of adjustment, satisfactory to the south, not be acceded to by a requisite number of States to perfect amendments to the Constitution of the United States, it is the opinion of this General Assembly that the slaveholding States should adopt for themselves the Constitution of the United States, with such amendments as may be satisfactory to the slaveholding States, and that they should invite into the Union with them all States of the north which are willing to abide such amended

Constitution and frame of government, severing at once all connections with States refusing such reasonable guarantees to our future safety; such renewed conditions of federal Union being first submitted for ratification to Conventions of all the States respectively.

Resolved, That the Governor of the State of Tennessee furnish copies of these resolutions, immediately, to the Governors of the non-slaveholding States."

February 1. To the Legislature: Transmitting the following ordinance adopted by an Alabama Convention January 15, 1861, relative to postal arrangements:

"Be it ordained, by the people of Alabama, in Convention assembled, that the postal contracts, arrangements and regulations in force on the 11th day of January, A. D., 1861, are permitted to be continued; and the persons charged with the duties thereof, are permitted to continue to discharge such duties until a postal treaty or treaties shall be concluded, or until otherwise ordered or provided by the authority of this State."

February 1. To the Legislature: Transmitting the following ordinance adopted by a convention of the people of Georgia, dissolving the relations between that State and the Federal Union:

"We, the people of the State of Georgia, in Convention assembled, do declare and ordain, and it is hereby declared and ordained, that the ordinance adopted by the people of the State of Georgia, in Convention, on the 2d day of January, in the year of our Lord 1788, whereby the Constitution of the United States of America, was assented to, ratified and adopted; and also, all acts and parts of acts, of the General Assembly of this State, ratifying and adopting amendments of the said Constitution, are hereby repealed, rescinded and abrogated.

We do further declare and ordain, that the Union now subsisting between the State of Georgia and other States, under the name of the United States of America, is hereby dissolved; and that the State of Georgia is in the full possession and exercise of all those rights of sovereignty which belong and appertain to a free and independent State."

February 1. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 1, 1861.

"I submit herewith, a copy of resolves of the Legislature of Massachusetts, tendering the aid of that Commonwealth to the President of the United States, in enforcing the laws and preserving the Union; also, a copy of the joint resolutions adopted by the Legislature of Pennsylvania, relative to the maintenance of the Constitution and the Union; and also, the joint resolutions of the Legislature of Wisconsin, which passed both Houses by a unanimous vote, pledging the co-operation of Wisconsin in the defence and preservation of the Union.

E. D. MORGAN."

WISCONSIN RESOLUTIONS, ADOPTED JANUARY 21, 1861.

"*Resolved,* by the Senate, the Assembly concurring, That the people of Wisconsin are ready to co-operate with the friends of the Union everywhere for its preservation; to yield a cheerful obedience to its requirements, and demand a like obedience from all others; and therefore adopt, as the sentiments of this Legislature, the preamble and resolutions of the State of New York, as follows:

Whereas, The insurgent State of South Carolina, after seizing the postoffice, custom house, moneys and fortifications of the Federal Government, has, by firing into a vessel ordered by the Government to carry troops and provisions to Fort Sumter, virtually declared war; *and whereas* the forts and property of the United States Government in Georgia, Alabama and Louisiana, have been unlawfully seized with hostile intentions; *and whereas* treason, as defined by the Constitution of the United States, exists in one or more of the States of the Union; *and whereas,* further, Senators and Congressmen avow and maintain these treasonable acts; therefore

Resolved, by the Senate, the Assembly concurring, That the Legislature of Wisconsin, profoundly impressed with

the value of the Union, and determined to preserve it unimpaired, hail with joy the recent firm, dignified, and patriotic special message of the President of the United States; that we tender to him, through the Chief Magistrate of our own State, whatever aid in men and money may be required to enable him to enforce the laws and uphold the authority of the Federal Government, and in defence of the more perfect Union, which has conferred prosperity and happiness on the American people. Renewing the pledge given and redeemed by our fathers, we are ready to devote our lives, our fortunes and our sacred honors, in upholding the Union and the Constitution.

Resolved, by the Senate, the Assembly concurring, That the Union-loving citizens of Delaware, Maryland, Virginia, North Carolina, Kentucky, Missouri and Tennessee, who labor with devoted courage and patriotism to withhold their States from the vortex of secession, are entitled to the gratitude and admiration of the whole people."

MASSACHUSETTS RESOLUTION, ADOPTED JANUARY 23, 1861.

"*Whereas,* Several States of the Union have, through the action of their people and authorities, assumed the attitude of rebellion against the National Government; and

Whereas, Treason is still more extensively diffused; and

Whereas, The State of South Carolina, having first seized the post office, custom house, moneys, arms, munitions of war, and fortifications of the Federal Government, has, by firing upon a vessel of the United States, committed an act of war; and

Whereas, The forts and property of the United States, in Georgia, Alabama, Louisiana and Florida, have been seized with hostile and treasonable intentions; and

Whereas, Senators and Representatives in Congress avow and sanction these acts of treason and rebellion; therefore,

Resolved, That the Legislature of Massachusetts, now, as always, convinced of the inestimable value of the Union, and the necessity of preserving its blessings to ourselves and our posterity, regard with unmingled satisfaction the determination evinced in the recent firm and patriotic special message of the President of the United States, to

amply and faithfully discharge his constitutional duty, of enforcing the laws and preserving the integrity of the Union; and we proffer to him, through the Governor of the Commonwealth, such aid in men and money, as he may require, to maintain the authority of the National Government.

Resolved, That the Union-loving and patriotic authorities, representatives, and citizens of those States, whose loyalty is endangered or assailed by internal or external treason, who labor in behalf of the Federal Union, with unflinching courage, and patriotic devotion, will receive the enduring gratitude of the American people."

PENNSYLVANIA RESOLUTIONS, ADOPTED JANUARY 24, 1861.

"*Whereas,* A convention of delegates assembled in the city of Charleston, in the State of South Carolina, did on the 20th day of December, in the year of our Lord one thousand eight hundred and sixty, adopt an ordinance, entitled 'An ordinance to dissolve the union between the State of South Carolina and other States united with her, under the compact, entitled the "Constitution of the United States of America,"' whereby it is declared the said Union is dissolved; and

Whereas, It becomes the duty of the people of Pennsylvania, through their representatives in this General Assembly, to make known what they consider to be the object sought, and the obligations and duties imposed by the Constitution; be it therefore

1. *Resolved,* By the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby resolved, that the Constitution of the United States of America was ordained and established, as set forth in its preamble, by the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity;[m] and if the people of any State in the Union are not in the full enjoyment of all the benefits intended to be

[m] U. S. Const. preamble.

secured to them by the said Constitution, if their rights under it are disregarded, their tranquillity disturbed, their prosperity retarded, or their liberties imperiled by the people of any other State, full and adequate redress can, and ought to be, provided for such grievances, through the action of Congress, and other proper departments of the National Government.

2. *Resolved,* That the people of Pennsylvania entertain, and desire to cherish, the most fraternal sentiments for their brethren of other States, and are ready now, as they have ever been to co-operate in all measures needful for their welfare, security, and happiness, under the Constitution which makes us one people. That while they cannot surrender their love of liberty, inherited from the founders of their State, sealed with the blood of the Revolution, and witnessed in the history of their legislation, and while they claim the observance of all their rights, under the Constitution, they nevertheless maintain now, as they have ever done, the constitutional rights of the people of the slave-holding States, to the uninterrupted enjoyment of their own domestic institutions.

3. *Resolved,* That we adopt the sentiment and language of President Andrew Jackson, expressed in his message to Congress, on the sixteenth day of January, one thousand eight hundred and thirty-three, ' That the right of the people of a single State, to absolve themselves at will, and without the consent of the other States, from their most solemn obligations, and hazard the liberties and happiness of the millions composing this Union, cannot be acknowledged; and that such authority is utterly repugnant, both to the principles upon which the general Government is constituted, and the objects which it was expressly formed to attain.'

4. *Resolved,* That the Constitution of the United States of America contains all the powers necessary to the maintenance of its authority, and it is the solemn and most imperative duty of the government to adopt and carry into effect whatever measures may be necessary to that end; and the faith and the power of Pennsylvania are hereby pledged to the support of such measures, in any manner, and to any extent that may be required of her by the constituted authorities of the United States.

5. *Resolved,* That all plots, conspiracies, and warlike

demonstrations against the United States, in any section of the country, are treasonable in their character, and whatever power of the government is necessary to their suppression, should be applied to that purpose without hesitation or delay.

6. *Resolved,* That the Governor be, and he is hereby requested to transmit a copy of these resolutions to the President of the United States properly attested, under the great seal of the Commonwealth, and like attested copies to the Governors of the several States of this Union, and also to our Senators and Representatives in Congress, who are hereby requested to present the same to the Senate and House of Representatives of the United States."

February 2. To the Legislature: Transmitting the following resolutions adopted by the Legislature of Maine, relative to a uniform decimal system of weights, measures and currencies:

"*Whereas,* There now exists throughout the civilized world divers unequal, incongruous and inconvenient systems of weights, measures and currencies, without a proper basis, or any uniform ratio of divisions and multiples — thus subjecting the scholar, the teacher, and the man of business to numerous and needless perplexities in computation and in trade, and making it a most difficult task to determine the absolute or the comparative value of many coins, quantities and measurements now in use; *and whereas* a reform in regard to these inequalities and irregularities is demanded by the highest interests of education and commerce; therefore

Resolved, That our Senators and Representatives in Congress be requested to use their influence to have that body consider the proposed subject and establish an uniform decimal system of weights, measures and currencies — fixing their standards or units of each measure, with their subdivisions or multiples, in the most concise and simple manner; and that the more effectually to promote this desirable reform, an international commission be recommended for the purpose of producing an uniform system of metrology throughout the commercial world.

And whereas, Any great reform of this kind can be suc-

cessfully completed only by the aid of scientific men; *and whereas,* it is necessary for the end in view to bring to requisition the greatest ability and ingenuity to be found in the nation; therefore,

Resolved, That Congress be recommended to offer a worthy premium to any citizen of the United States, who shall devise the best system of decimal weights, measures and currencies — the question of merit to be decided by the commission to which the whole subject shall be entrusted.

Resolved, That the Secretary of State be instructed to forward printed copies of these resolves to our Senators and Representatives in Congress."

February 2. To the Legislature: Transmitting the following resolutions adopted by the Legislature of New Jersey January 29, 1861, relative to the union of the States.

"*Whereas,* The people of New Jersey, conforming to the opinion of 'the Father of his country,' consider the unity of the government, which constitutes the people of the United States one people, a main pillar in the edifice of their independence, the support of their tranquillity at home and peace abroad, of their prosperity, and of that liberty which they so highly prize; and properly estimating the immense value of their National Union to their individual happiness, they cherish a cordial, habitual and immovable attachment to it, as the palladium of their political safety and prosperity; therefore,

1. *Be it resolved,* by the Senate and General Assembly of the State of New Jersey, That it is the duty of every good citizen, in all suitable and proper ways, to stand by and sustain the Union of the States as transmitted to us by our fathers.

2. *And be it resolved,* That the Government of the United States is a national government, and the Union it was designed to perfect is not a mere compact or league; and that the Constitution was adopted in a spirit of mutual compromise and concession by the people of the United States, and can only be preserved by the constant recognition of that spirit.

3. *And be it resolved,* That however undoubted may be the right of the general Government to maintain its au-

thority and enforce its laws over all parts of the country, it is equally certain that forbearance and compromise are indispensable at this crisis to the perpetuity of the Union, and that it is the dictate of reason, wisdom and patriotism, peacefully to adjust whatever differences exist between the different sections of our country.

4. *And be it resolved,* That the resolutions and propositions submitted to the Senate of the United States, by the Hon. John J. Crittenden, of Kentucky, for the compromise of the questions in dispute between the people of the Northern and of the Southern States, or any other constitutional method that will permanently settle the question of slavery, will be acceptable to the people of the State of New Jersey, and the Senators and Representatives in Congress from New Jersey, be requested and earnestly urged to support those resolutions and propositions.

5. *And be it resolved,* That as the Union of the States is in imminent danger unless the remedies before suggested be speedily adopted, then, as a last resort, the State of New Jersey hereby makes application, according to the terms of the Constitution, to the Congress of the United States, to call a convention of the States to propose amendments to said Constitution.[n]

6. *And be it resolved,* That such of the States as have in force laws which interfere with the constitutional rights of citizens of other States, either in regard to their persons or property, or which militate against the just construction of that part of the Constitution that provides that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States,'[o] are earnestly urged and requested, for the sake of peace and the Union, to repeal all such laws.

7. *And be it resolved,* That his Excellency Charles S. Olden, Peter D. Vroom, Robert F. Stockton, Benjamin Williamson, Joseph F. Randolph, Frederick T. Frelinghuysen, Rodman M. Price, William C. Alexander and Thomas J. Stryker, be appointed Commissioners to confer with Congress and our sister States, and urge upon them the importance of carrying into effect the principles and objects of the foregoing resolutions.

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[n] U. S. Const. art. 5, § 1.

[o] U. S. Const. art. 4, § 2, clause 1; see also 14th am.

8. *And be it resolved,* That the Commissioners above named, in addition to their other powers, be authorized to meet with those now or hereafter to be appointed by our sister State of Virginia, and such commissioners of other States as have been, or may be hereafter appointed, to meet at Washington on the 4th day of February next."

February 5. To the Legislature: Transmitting the following resolutions adopted on the 22d of January by the Legislature of Minnesota on the state of the Union:

"1. *Resolved,* That one of the vital and necessary principles which form the basis of all free governments, is that the constitutional majority must always rule. And, therefore, the right of the people of any State to withdraw from the Union, thereby hazarding the liberties and happiness of the millions comprising this Confederacy, can never be acknowledged by us under any circumstances.

We regard secession upon the part of any State, as amounting directly to revolution, and precipitating civil war, with all its sad train of consequences.

2. *Resolved,* That the people of the State of Minnesota, reiterate their unalterable devotion to the Constitution of the United States, and that, if its provisions are strictly observed, it will, in its own words, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessing of liberty, to ourselves and our posterity.

3. *Resolved,* That Abraham Lincoln and Hannibal Hamlin, having been constitutionally and legally elected President and Vice-President of the United States, at a general election fully and freely participated in, on the same day, by the people of every State of the Union, south as well as north, that any attempt to dissolve or destroy the Union on account thereof, is without excuse or justification, and should receive the condemnation of every patriot in the land.

4. *Resolved,* That we have heard with astonishment and indignation of the recent outrages perpetrated at Charleston, South Carolina, by firing upon an American steamer, sailing under the flag of our country, and that we expect of the General Government the strongest and most vigorous effort to assert its supremacy, and to check the work of re-

bellion and treason. Fully impressed with our duty to make every possible effort to uphold the Union, and to maintain the authority of the General Government, we hereby tender to the President of the United States, for that purpose, through the Governor of this State, aid in men and money, to the extent of our ability.

When one or more States erect the standard of disunion, and place themselves in military array against the Government bequeathed to us by our ancestors, we can discover no other honorable or patriotic resource than to test, both on land and on ocean, the full strength of the Federal authority under our national flag.

5. *Resolved,* That we declare to each State of this Union our sincere desire to secure a renewal of that fraternal feeling which ought always to exist between citizens of a common country, and which distinguished the history of the nation for more than half a century. Especially do we express to those patriotic citizens of the southern States, who have nobly and manfully exerted their utmost efforts to prevent the catastrophe of dissolution, our sincere gratitude and highest admiration.

6. *Resolved,* That the most sincere thanks of the nation are justly due to that distinguished patriot and veteran, Lieut. General Winfield Scott, for the prompt and decisive steps he has taken to stay the tide of revolution, and for the determined spirit he has evinced in maintaining the honor of our Government.

7. *Resolved,* That we will never consent or submit to the obstruction of the free navigation of the Mississippi river, from its source to its mouth, by any power hostile to the Federal government.

8. *Resolved,* That the Governor of this State is hereby requested to transmit a copy of these resolutions to the President of the United States, to Lieut. General Winfield Scott, and to each of our Senators and Representatives in Congress of the United States, and to the Governors of the several States."

February 5. To the Legislature:

"ALBANY, *February* 5, 1861.

"I transmit herewith, a copy of certain resolutions adopted by the Legislature of Kentucky, recommending a call for a Convention of the United States; and also a

series of resolutions of the same body, appointing Commissioners to attend the Conference at the city of Washington, on February 4, in accordance with the invitation of the Virginia Legislature.

E. D. MORGAN."

KENTUCKY RESOLUTIONS, JANUARY, 1861.

"*Whereas,* The people of some of the States feel themselves deeply aggrieved by the policy and measures which have been adopted by the people of the other States; *and whereas,* an amendment of the Constitution of the United States is deemed indispensably necessary, to secure them against similar grievances in the future, therefore

Resolved, by the General Assembly of the Commonwealth of Kentucky, That application to Congress to call a convention for proposing amendments to the Constitution of the United States, pursuant to the fifth article thereof, be, and the same is hereby, now made by this General Assembly of Kentucky; and we hereby invite our sister States to unite with us, without delay, in similar application to Congress.

Resolved, That the Governor of this State forthwith communicate the foregoing resolution to the President of the United States, with the request that he immediately place the same before Congress, and the Executives of the several States, with a request that they lay them before their respective Legislatures.

Resolved, If the Convention be called in accordance with the provisions of the foregoing resolutions, the Legislature of the Commonwealth of Kentucky suggest for the consideration of that convention, as a basis for settling existing difficulties, the adoption, by way of amendments to the Constitution, the resolutions offered in the Senate of the United States by the Hon. John J. Crittenden."

RESOLUTIONS appointing Commissioners to attend Conference at Washington City, February 4th, in accordance with the invitation of the Virginia Legislature.

"*Whereas,* The General Assembly of Virginia, with a view to make an effort to preserve the Union and the Constitution in the spirit in which they were established by

the fathers of the Republic, have, by resolution invited all the States who are willing to unite with her in an earnest effort to adjust the present unhappy controversies, to appoint commissioners to meet on the 4th of February next, to consider, and, if practicable, agree upon some suitable adjustment:

Resolved, That we heartily accept the invitation of our old mother, Virginia, and that the following six commissioners, viz: Wm. O. Butler, Jas. B. Clay, Joshua F. Bell, C. S. Morehead, Jas. Guthrie and Chas. A. Wickliffe, be appointed to represent the State of Kentucky in the contemplated convention, whose duty it shall be to repair to the City of Washington, on the day designated, to meet such commissioners as may be appointed by any of the States, in accordance with the foregoing invitation.

Resolved, That if said commissioners shall agree upon any plan of adjustment requiring amendments to the Federal Constitution, they be requested to communicate the proposed amendments to Congress, for the purpose of having the same submitted by that body, according to the forms of the Constitution, to the several States for ratification.[p] That if said commissioners cannot agree in an adjustment, or if agreeing, Congress shall refuse to submit for ratification such amendments as they shall propose, the commissioners of this State shall immediately communicate the result to the Executive of this Commonwealth, to be by him laid before this General Assembly.

Resolved, That in the opinion of the General Assembly of Kentucky, the propositions embraced in the resolutions presented to the Senate of the United States by the Hon. John J. Crittenden, so construed that the first article proposed as an amendment to the Constitution of the United States, shall apply to all the territory of the United States now held, or hereafter acquired, south of latitude 36 deg. and 30 min., and provide that slavery of the African race shall be effectually protected as property herein during the continuance of the territorial government; and the fourth article shall secure to the owners of slaves the right of transit with their slaves between and through the non-slaveholding States and territories; constitute the basis of such an adjustment of the unhappy controversy which now

[p] U. S. Const. art. 5, § 1.

divides the States of this Confederacy as would be acceptable to the people of this Commonwealth."

February 7. To the Legislature: Transmitting a communication from the Governor of North Carolina, containing a resolution adopted by the Legislature of that State directing the return of the resolutions received from the Legislature of New York adopted January 13, pledging the support of the State in maintaining the Union.

February 7. To the Legislature:

"ALBANY, *February* 7, 1861.

"I submit herewith, a copy of a communication received by me from the Hon. John A. Dix, Secretary of the Treasury.

The high source from whence it proceeds, and the importance of the subject to which it relates, entitles it to your early consideration.[17]

E. D. MORGAN."

LETTER FROM SECRETARY DIX.

TREASURY DEPARTMENT,
WASHINGTON, *February* 4, 1861.

His Excellency, EDWIN D. MORGAN,
Governor of the State of New York:

SIR.—In a letter to the committee of ways and means of the House of Representatives, of the 18th ultimo, I suggested that the public moneys belonging to the United States, deposited with the States for safe keeping, under the act of Congress of the 23d of June, 1836, might be made the basis of a loan to meet the expenditures of the Federal Government, and become the means of sustaining the pub-

[17] By chapter 18, passed February 16, the faith of the State was pledged to the general government in an amount equal to the United States Deposit Fund. The pledge was declared to be for the purpose of aiding the government in obtaining a loan, and the pledge was to be endorsed on the bonds.

lic credit in the present disordered condition of the commercial and political affairs of the country. I observe that a proposition has been introduced into the Legislature of New York to guaranty stocks of the United States to the amount of the moneys thus deposited with the State. This is in strict accordance with the suggestion I made. Should the measure be adopted, and I trust it may, it could not fail to have a most salutary influence, by upholding, as New York has done in other trying emergencies, the credit and the authority of the General Government.

I am very respectfully, your obedient servant,

JOHN A. DIX,
Secretary of the Treasury.

February 8. To the Legislature: Transmitting the following resolutions adopted by the Legislature of Indiana on the 31st of January:

"*Whereas,* The State of Virginia has transmitted to this State, resolutions adopted by the General Assembly, inviting all such States as are willing to unite with her in an earnest effort to adjust the present unhappy controversies in the spirit in which the Constitution was originally formed, to send Commissioners to meet those appointed by that State in Convention, to be held in the city of Washington on the 4th of February next, to consider, and, if possible, to agree upon some suitable adjustment; and,

Whereas, Some of the States to which invitations were extended by the State of Virginia, have already responded and appointed their Commissioners; therefore,

Resolved, By the General Assembly of the State of Indiana, that we accept the invitation of the State of Virginia in the true spirit of fraternal feeling, and that the Governor of this State is hereby directed and empowered to appoint five Commissioners to meet the Commissioners appointed by our Sister States, to consult upon the unhappy differences now dividing the country; but the said Commissioners shall take no action that will commit this State, until nineteen of the States of the Union are represented,

and without first having communicated with this General Assembly in regard to such action, and having received the authority of the same so to commit the State.

Resolved, That while we are not prepared to assent to the terms of settlement proposed by the State of Virginia, and are fully satisfied that the Constitution, if fairly interpreted, and obeyed, contains ample provisions within itself for the correction of the evils complained of; still, with a disposition to reciprocate the patriotic desire of the State of Virginia, and to have harmoniously adjusted all differences existing between the States of the Union, this General Assembly is induced to respond to the invitation of Virginia by the appointment of the Commissioners herein provided for, but as the time fixed for the Convention to assemble is so near at hand that the States cannot be represented, it is expected that the Commissioners on behalf of this State will insist that the Convention adjourn until such time as the States shall have an opportunity of being represented."

February 8. To the Assembly:

Returning for amendment a bill entitled "An act to extend the charter of the New York Mills Fire Company."[18]

"This bill seeks to extend and continue, 'for and during ten years from the expiration thereof, the charter of the said fire company.'

The charter of the New York Mills fire company was granted on April 20, 1830, to remain in force for the period of ten years. On March 21, 1840, it was extended for ten years longer, expiring in 1850. At the extra session of 1851, a bill to further extend the charter of this company was introduced in the Assembly, and was ordered to a third reading; but it does not appear from the Assembly journal that it finally passed, and no reference is made to it in the Senate journal.

The session laws of 1851 contain nothing respecting it. If therefore the bill I return herewith were signed it would

[18] The New York Mills Fire Company act was amended and passed, and became chapter 70 on the 26th of March.

be a mere nullity, as the charter of the company expired more than ten years ago."

February 8 and 11. To the Assembly and Senate respectively: Transmitting the following communication from Thurlow Weed, declining the appointment of Commissioner to the Washington Convention, recommended by Virginia. [See note 16.]

ALBANY, *February* 8, 1861.

To His Excellency Gov. MORGAN:

DEAR SIR.—I have just received the resolutions of the Senate and Assembly appointing me a Commissioner to meet Commissioners from other States now convened in the city of Washington, upon the invitation of the Legislature of the State of Virginia.

Though sympathizing warmly in this beneficent movement, and intensely anxious that it may avert the worst of national calamities, imperative considerations constrain me to decline the appointment.

In communicating this determination to yourself and to the Legislature, I beg to express a deep and grateful sense of the honor and the obligation which so flattering an expression of confidence imposes upon

Yours truly,

THURLOW WEED.

February 11. To the Legislature:

ALBANY, *February* 11, 1861.

"I have received from the President elect, a letter, of which the following is a copy, accepting the hospitalities tendered him by concurrent resolutions of the Legislature, with the request, as will be seen, that the ceremonies if any, shall be only such as will occupy the least time possible.

It is understood that Mr. Lincoln will reach Buffalo on Saturday of the present week, where he will remain until Monday morning.

It is proper to add that I have detailed a portion of my staff to meet him at Buffalo, and to escort him to this city, where, it is expected, he will arrive on the afternoon of Monday, the 18th instant, at about 3 o'clock.

E. D. MORGAN."

LETTER FROM PRESIDENT-ELECT LINCOLN.

SPRINGFIELD, ILL., *February* 4, 1861.

His Excellency, EDWIN D. MORGAN, Governor of New York:

SIR.— Your letter of the 30th ult., inviting me, on behalf of the Legislature of New York, to pass through that State on my route to Washington, and tendering me the hospitalities of her authorities and people, has been duly received. With feelings of deep gratitude to you and them, for this testimonial of regard and esteem, I beg you to notify them that I accept the invitation so kindly extended.

Your obedient servant,

A. LINCOLN.

P. S.— Please let ceremonies be only such as to take the least time possible. A. L.

The Senate and Assembly met in joint session on the 18th of February for the purpose of receiving the President Elect. He was welcomed to New York by Andrew J. Colvin, the Temporary President of the Senate, and responded as follows:

"MR. PRESIDENT AND GENTLEMEN OF THE GENERAL ASSEMBLY OF THE STATE OF NEW YORK.— It is with feelings of great diffidence, and I may say, with feelings even of awe, perhaps greater than I have recently experienced, that I meet you here in this place.

The history of this great State, the renown of those great men that have stood here, and spoken here, and been heard here, all crowd around my fancy, and incline me to shrink from any attempt to address you.

Yet, I have some confidence given me by the generous manner in which you have invited me, and by the still more generous manner in which you have received me, to speak further. You have invited and received me without distinction of party. I cannot for a moment suppose that this has been done, in any considerable degree, with reference to my personal services — but that it is done in so far as I am regarded, at this time, as the representative of the majesty of this great nation.

I doubt not this is the truth and the whole truth of the case, and this is as it should be. It is much more gratifying to me that this reception has been given to me as the representative of a free people, than it could possibly be if tendered to me as an evidence of devotion to me, or to any one man personally.

And now, I think it were more fitting that I should close these hasty remarks. It is true, while I hold myself without mock modesty, the humblest of all the individuals that have been elevated to the Presidency, that I have a more difficult task to perform than any of them.

You have generously tendered me the support — the united support — of the great Empire State. For this, in behalf of the nation — in behalf of the present and future of the nation — in behalf of civil and religious liberty, for all time to come — most gratefully do I thank you. I do not propose to enter into an explanation of any particular line of policy, as to our present difficulties, to be adopted by the incoming administration. I deem it just to you, to myself, to all, that I should see everything, that I should hear everything — that I should have every light that can be brought within my reach, in order that when I do so speak, I shall have enjoyed every opportunity to take correct and true ground — and for this reason, I do not propose to speak, at this time, of the policy of the government; but when the time comes, I shall speak as well as I am able, for the good of the present and future of this country —

for the good both of the North and of the South of this country — for the good of the one and the other, and of all sections of the country. In the meantime, if we have patience — if we restrain ourselves — if we allow ourselves not to run off in a passion, I still have confidence that the Almighty Maker of the Universe will, through the instrumentality of this great and intelligent people, bring us through this, as He has through all the other difficulties of our country. Relying on this, I again thank you for this generous reception."

February 13. To the Assembly:

Veto of a bill entitled "An act to amend an act in relation to the penitentiary in the County of Onondaga, passed April 10, 1850."

" The bill is intended to accord to the counties of Broome and Cortland, the privileges to which certain other counties are entitled, under section 7 of chapter 338 of the laws of 1850. This section authorizes the board of supervisors of Oswego and six other counties named, to enter into an agreement with the supervisors of Onondaga, to receive and keep in the same penitentiary, any convict sentenced to hard labor in the jail in any of such counties, for any term not less than three months. It also directs the sheriff, on his receiving suitable notice, to convey such persons to said penitentiary; requires the keeper thereof to receive and keep for the term for which they may be respectively sentenced, and employ them according to the discipline and rules of the said penitentiary, and authorizes the board of supervisors to pay such fees to the sheriff for transporting the convict as they shall direct.

By reference to the Laws of 1858, chapter 139, it will be seen that a law containing each and every provision embraced in the section above referred to, and more perfect

in its details, was passed in relation to the Albany county penitentiary; and chapter 289 of the laws of 1859, enacts that 'chapter 139 of the laws of 1858 is hereby amended, so as to allow the supervisors of any county in this State to contract with the supervisors of any county having a penitentiary therein, in the same manner and with like effect as is permitted by the provisions of this chapter.'

It will thus be seen that a general law, conferring all the powers sought to be conferred by the special act, and more carefully matured, is now in force, and no necessity exists, therefore, for the bill I herewith return.

It may not be out of place in making this communication, to reiterate the following language of my last annual message:

'I earnestly advise you to avoid the practice, by far too prevalent, of local and special legislation. The great evil sought to be remedied by our present Constitution, was that of monopolies and of class legislation. If difficulties arise, let general laws be amended or passed, but let our policy be opposed to special enactments. No rule can be more equitable than that of laying down general laws and requiring all alike to regulate their conduct by them. Special laws interfere with the administration of justice, operate unequally upon our citizens, engage the time and energies of the Legislature, and serve to confound rather than protect the rights of the people.'

I feel the more free to urge attention to this subject, since it appears, from the resolutions adopted by the Assembly on the 15th ult., that your views and my own are in harmony. You therein request 'that the several committees of the House recommend the passage of no bill for a local object, where the same can be obtained under general laws already in existence, or which may be enacted.'"

The bill was not passed over the veto.

February 13. To the Assembly:

Veto of a bill entitled "An act to authorize the city of Poughkeepsie to borrow money for the purchase of a steam fire engine, and for other specified purposes."

The bill "authorizes the common council to borrow on the credit of said city, the sum of $6,000, to be applied to the purchase of a steam fire engine, now in use; to the completion of a certain bridge; and for the purchase of a new hose. It also authorizes the issue of bonds in the name of the city, and that due provision shall be made in each year for the payment of interest thereon, and also, for the portions of the principal falling due next year.

The city of Poughkeepsie was incorporated in March 28, 1854, by chapter 90, of the laws of that year. Section 1 of title 5 of said act of incorporation, declares that the common council shall cause a sum not exceeding $4,000, to be raised annually by tax, to pay salaries and other necessary and contingent expenses, not otherwise specially provided for. Section 13 of the same title declares that 'whenever the common council shall be of opinion that the interests of said city require the expenditure of money, for an extraordinary or special purpose, which, in their opinion, cannot be paid from the said sum of $4,000,' they may make an estimate of the sum necessary to be raised for said purposes, and for each of them, if there be more than one object, stating the amount and the objects for which it is required, together with the reasons for their opinion, and cause such statement and estimate to be published in all the newspapers printed in said city; and shall give notice therein, that on a day and at a place to be therein specified, a special election will be held, at which the question whether the said sum or sums shall be raised or not, will be submitted to the qualified voters for their determination. Proper provision is made for holding the poll, and for restricting the voters to be male residents of the city, of twenty-one years of age, whose names shall be on

the assessment roll made by the assessors of said city next preceding the special election; and upon whose property, or upon whom, as the owners or possessors of property, a tax shall be assessed or imposed in and by said roll, and no other person or persons whatever shall be entitled to vote at the said special election. Due provision is made for preparing ballots, taking the necessary oath, punishment of false swearing, &c. It is provided that the total amount proposed to be raised and voted for in any one year at a special election or elections, shall not exceed $10,000, and that not more than one such election shall be held in any year, unless such amount is recommended, or such election directed by a vote of three fourths of all the members of the common council. The common council are authorized to expend the amount of money thus authorized for the objects specified in their published statement, and sanctioned by such election. Power is also conferred upon the common council to borrow, if they deem it necessary to do so, the amount so voted, in anticipation of the collection of said tax, for a time not exceeding five years, payable in equal annual installments.

Section 14 of title 5, expressly 'prohibits the common council from borrowing any money on account of the city, except as hereinbefore provided,' and except for the purpose of anticipating as far as may be necessary, the receipt of the general annual tax, and all sums borrowed for that purpose shall be paid within the fiscal year in which the laws are made. The common council 'shall not create any pecuniary obligation whatever, on the part of the city, which shall not be payable within the year for which the council creating such obligation was elected, and which cannot be discharged from the income of the same year; but this provision does not extend to moneys raised by special tax authorized by a vote of the taxpayers.

I give at much length the provisions of title 5, for the purpose of showing how amply and completely the charter

of the city provides for obtaining whatever moneys are required by the city government, while, with jealous care, it protects the interests of property holders. It will be seen, that with the consent of three-fourths of the members of the common council, and a majority of the taxpayers, as many elections can be held, and as much money may be raised or authorized to be borrowed as they may determine, and the only restriction the charter imposes is, that no municipal obligation shall be created for a period exceeding five years. It will be observed on examining the bill now returned, that it fixes no limits within which the bonds are to be retired. In this respect, the wise provisions of the charter, which expressly guards against taking the distant future for advantages and conveniences enjoyed by to-day, stand in favorable contrast.

Believing that where the local authority is complete, without resort to the Legislature, and that no power for creating a debt is so safe as that lodged with the taxpayers, whose burthen it immediately becomes, I am constrained to withhold my signature from this bill."

The bill was not passed over the veto.

February 15. To the Legislature: Transmitting the following resolutions on the state of the Union, adopted by the Legislature of Michigan on the 2d instant:

"*Whereas,* Certain citizens of the United States are at this time in open rebellion against the Government, and by overt acts threaten its peace and harmony, and to compass its final overthrow, therefore

Resolved, That the Government of the United States is supreme, with full inherent powers of self-protection and defence.

Resolved, That Michigan adheres to the Government as ordained by the Constitution, and for sustaining it intact, hereby pledges and tenders to the General Government all its military power and material resources.

Resolved, That concession and compromise are not to be

entertained or offered to traitors, while the rights and interests of Union-loving citizens should be regarded and respected in every place and under all circumstances."

February 15. To the Legislature: Transmitting the following secession ordinance and resolution adopted by a Convention of the people of Louisiana on the 26th of January:

"We, the people of the State of Louisiana, in Convention assembled, do declare and ordain, and it is hereby declared and ordained, that the ordinance passed by us in Convention, on the 22d day of November, in the year 1811, whereby the Constitution of the United States of America, and the amendments of the said Constitution were adopted, and all laws and ordinances by which the State of Louisiana became a member of the Federal Union, be, and the same are hereby repealed and abrogated; and that the union now subsisting between Louisiana and other States, under the name of 'The United States of America,' is hereby dissolved.

We do further declare and ordain, that the State of Louisiana hereby resumes all rights and powers heretofore delegated to the Government of the United States of America; that her citizens are absolved from all allegiance to said government, and that she is in full possession and exercise of all those rights of sovereignty which appertain to a free and independent State.

We do further declare and ordain, that all rights acquired and vested under the Constitution of the United States, or any act of Congress, or treaty, or under any law of this State, and not incompatible with this ordinance, shall remain in force, and have the same effect as if this ordinance had not been passed."

RESOLUTION RELATIVE TO THE NAVIGATION OF THE MISSISSIPPI RIVER.

"*Resolved,* That we, the people of the State of Louisiana, recognize the right of the free navigation of the Mississippi river and its tributaries, by all friendly States bordering thereon. And we also recognize the right of

egress and ingress of the mouths of the Mississippi by all friendly States and powers; and we do hereby declare our willingness to enter into any stipulations to guarantee the exercise of said rights."

February 21. To the Legislature: Transmitting resolutions adopted by the Legislature of Illinois, authorizing the appointment of five commissioners to the Washington Convention:

"*Whereas,* Resolutions of the State of Virginia have been communicated to the General Assembly of this State, proposing the appointment of Commissioners, by the several States, to meet in convention on the 4th day of February, 1861, at Washington:

Resolved, by the Senate, the House of Representatives concurring herein, That with the earnest desire for the return of harmony and kind relations among all our sister States, and our respect to the Commonwealth of Virginia, the Governor of this State be requested to appoint five Commissioners on the part of the State of Illinois, to confer and consult with the Commissioners of other States, who shall meet at Washington, provided that said Commissioners shall at all times be subject to the control of the General Assembly of the State of Illinois.

Resolved, That the appointment of Commissioners by the State of Illinois, in response to the invitation of the State of Virginia, is not an expression of opinion on the part of this State, that any amendment of the Federal Constitution is requisite to secure to the people of the slaveholding States adequate guarantees for the security of their rights, nor an approval of the basis of settlement of our difficulties proposed by the State of Virginia, but it is an expression of our willingness to unite with the State of Virginia, in an earnest effort to adjust the present unhappy controversies in the spirit in which the Constitution was originally framed, and consistently with its principles.

Resolved, That while we are willing to appoint Commissioners to meet in convention with the other States, for consultation upon matters which at present distract our harmony as a nation, we also insist that the appropriate and constitutional method of considering and acting upon

the grievances complained of by our sister States, would be by the call of a convention for the amendment of the Constitution, in the manner contemplated by the fifth article of that instrument; and, if the States deeming themselves aggrieved, shall request Congress to call such convention, the Legislature of Illinois will and does concur in such call."

February 21. To the Legislature: Transmitting the following resolution adopted by the Legislature of Texas on the first instant:

"*Be it resolved, by the Legislature of the State of Texas,* That in view of the exigencies of the times, we deem it proper to declare, that when the sovereign States of this Confederacy entered into the compact of the Union, they delegated to the Federal Government no power to compel, by force of arms, obedience by the States to the Federal authority, but on the contrary, such power was expressly denied. That the employment, therefore, of force by the Federal Government to compel any State of this Union to perform its obligations under the Federal compact, or to compel a State against the will of its people to remain a member of the Confederacy, is in violation of the Constitution, a dangerous usurpation of power, destructive of the right of free government and fatal to the existence of the Union itself, which formed of equal and independent sovereignties cannot be as between conquering States and subjugated provinces. That should, (as we have serious reason to apprehend may be the present condition of the Union,) the Federal Government attempt to coerce any of our sister States of the South, by force of arms, into subjection to Federal rule, we assure such States of the sympathies of our people, and that we shall make common cause with them in resisting by all means and to the last extremity such unconstitutional violence, and tyrannical usurpation of power."

February 27. To the Assembly:

Veto of a bill entitled "An act to extend the time for the collection of taxes in Oneida County."

"I have so frequently had occasion to express my dissent from the practice heretofore so prevalent, of asking

for extension of time for the collection of taxes, that I do not deem it necessary now to refer to the subject at much length.

I felt it to be my duty on the 7th of March last to return to the Assembly, without my sanction, the bill extending the time for the collection of taxes in the several counties of the State. It was strongly urged that the payment of the delinquent taxes could not be enforced unless this bill became a law, but it is well known that the levy was collected without more than the ordinary difficulty.

In this connection I would respectfully call your attention to the provisions of relief in extraordinary cases afforded by the statutes referred to in my special message of March last, on this subject, and to the whole of that paper, which will be found at page 366 of the Senate journal of 1860.

It is urged in the present instance, that in consequence of a change of valuation of the property of the county by the board of equalization, and of questions arising out of such change, an injunction was obtained, by some of the banks of the county, restraining the board of supervisors from levying the tax until the middle of January last; and that exercising due diligence, the collectors will be unable to collect the tax during the period intervening between the dissolving of the injunction and the first Monday in March, when their warrants mature, and hence it is insisted that this bill is necessary.

Chapter 69 of the laws of 1853, entitled 'An act extending the time for the collection of taxes when stayed by injunction or otherwise,' was undoubtedly intended to provide for all cases of injunction. If it does not provide for this particular exigency, a simple amendment involving a change of but few words would meet the present and all similar cases.

As such an amendment can be immediately made, and as reflection has only served to confirm me in the views here-

tofore expressed upon this subject, I return the bill herein referred to without my approval.* ''

February 28. To the Senate:

''ALBANY, *February* 26, 1861.

''I submit herewith copies of the following papers received by me under cover, with the letter of the Governor of Kansas, viz:

Memorial of the Legislative Assembly of the Territory of Kansas.

Letter of J. M. Beebee, Governor Territory of Kansas.

Letter of C. Robinson, Governor elect of Kansas.

Letter of W. F. M. Arney, General Shipping Agent for Kansas relief.

Report of joint committee on memorial in behalf of the suffering in Kansas.

Circular to the friends of suffering humanity.

Receipts for relief of Kansas. Wants of the people. Kansas.[19]

E. D. MORGAN.''

[See Senate Document No. 48.]

March 4. To the Assembly:

Veto of a bill entitled "An act to authorize the town of Allegany, in the county of Cattaraugus, to raise money to rebuild a bridge across the Allegany River, in said town."

''Section 1 of this bill authorizes the board of supervisors to cause to be levied and collected from the taxable property of the said town, the sum of $4,000 for the said

* See *ante*, p. 215. The bill was passed over the veto, and became a law, chapter 23, on the 28th of February.

19 See 1857, note 7, *ante*, p. 33. The Kansas relief act, L. 1861, chapter 17, appropriating $50,000, was passed before these communications were transmitted to the Legislature, but the subject had been under consideration some time. Governor King in 1857, had recommended an appropriation for the relief of the suffering people of Kansas. The report referred to in the special message of April 6, shows the distribution of the relief fund.

rebuilding, one-half of the amount at their annual session in the month of November, 1861, and the remainder at their annual session in November, 1862.

Section 2 appoints a commissioner to superintend the construction of the bridge, and requires him to execute a bond, and to report his doings to the board of supervisors, annually.

Section 3 makes it the duty of the commissioner to cause to be erected and finished on the site of the one recently carried away, a suitable bridge, before the 15th of September next, under proper restrictions as to plans and notification, letting of contract, security of contractor and compensation of contractor.

Section 4 authorizes and requires the commissioner to issue bonds from time to time as it becomes necessary, to pay for the work which shall be payable at the office of the county treasurer, one-half on March 1, 1862, and the balance on the 1st of March, 1863.

Section 5 requires the commissioner to file in the town clerk's office, within thirty days after the completion of the bridge, a sworn certificate of the expenses incurred in its construction.

Section 6 provides for filling vacancy in office of commissioner should any occur.

Section 7 submits the act to the legal voters of the town at their annual town meeting, and determines the form of the ballot to be used on that occasion, and section 8 makes it the duty of the town clerk, if voted for by a majority of the legal voters, to make a certificate of the result of the election, and deliver one copy to the commissioner and one to the treasurer of the county.

Chapter 194 of the laws of 1849, vests in boards of supervisors certain legislative powers. By reference to subdivision 9 of section 4 of said act, it will be seen that they have power to authorize any town in such (any) county by a vote of such town to borrow any sum not exceeding $4,000,

in one year, to build or repair any roads or bridges in such towns, and prescribe the time for the payment of the same, which time shall be within ten years, and for assessing the principal and interest thereof upon such town.

Chapter 103 of the laws of 1858, provides for the speedy construction and repair of roads and bridges where the same have been damaged or destroyed by the elements or otherwise, after any town meeting shall have been held, or where too late to give notice as required by statute. This act confers upon commissioners of highways, by and with the consent of the board of town auditors in which such road or bridges are situated, power to cause the same to be immediately repaired or rebuilt, and provides for the presentation and auditing of the vouchers, and collecting the same as though authority had been voted at a town meeting. It also provides for convening the town auditors, and for issuing certificates of indebtedness bearing interest.

It will thus be seen that ample power is already conferred upon boards of supervisors, to authorize the borrowing of a prescribed amount of money equal to the sum mentioned in the bill now returned, for the construction or repair of roads and bridges, and for assessing the principal and interest thereof; and that due provision is also made for rebuilding or repairing roads and bridges in extraordinary cases. In brief, that every right proposed to be conferred by this bill already fully exists; as, therefore, there are general laws on the statute book conferring all the authority contemplated by this bill; and in compliance with what, in this regard, I believe to be the judgment of the Assembly as expressed in its resolutions of the 15th of January last, I return the bill to the Assembly in which it originated, without my approval."

The bill was not passed over the veto.

March 20 and 21. To the Assembly and Senate respectively: Transmitting the following resolutions adopted by

the Legislature of Wisconsin on the 12th instant, expressing confidence in the administration of President Lincoln:

"*Whereas,* A new administration of the government has been inaugurated under circumstances of peculiar embarrassment; with a dissatisfied people in one portion of the Union, seeming to hate the Union itself; *and whereas,* the peace and prosperity of the Union depend upon its perpetuity, and its perpetuity depends upon the firmness and integrity of the administration of the government, sustained by a law-abiding, loyal and union loving people; *and whereas,* the inaugural address of President Lincoln, gives abundant evidence that he possesses that ability and firmness that will restore peace and prosperity to our beloved Union, by a strict adherence to all the requirements of the Constitution and the Laws, showing favor to no one section of the Union over another; therefore,

Resolved, That in the inaugural address of Abraham Lincoln, we recognize the words of a true patriot and the sagacious statesman, and that we hail it as an omen that the government of this country is to be restored to its original purity, as founded by the father of his country assisted by his compatriots of revolutionary memory.

Resolved, That in the language of the inaugural, 'Though passion may have strained, it must not break our bonds of affection: the mystic chords of memory, stretching from every battle field and patriot grave, every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.'

Resolved, That we pledge the faith of the people of Wisconsin to aid the President of the United States, in carrying out the principles indicated in his inaugural address to the fullest extent, putting into the scale, if need be 'our lives, our fortunes, and our sacred honor.'"

March 21. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 21, 1861.

"I transmit herewith a copy of the joint resolution adopted by Congress, to amend the Constitution of the

United States, which I have had the honor to receive from the President.

The amendment proposed is one which will commend itself to the judgment, while it conforms to the sentiments of the people of this State, who on all occasions, have avowed the doctrine of the right of the States, respectively, to control their domestic institutions in such manner as they may judge to be most conducive to their prosperity and happiness.

While New York is unalterably opposed to the institution of slavery within her own borders, and is unwilling to submit to any external interference with her internal policy, she is unqualifiedly in favor of extending any proper constitutional guaranty, desired by her sister States, against the exercise of any power to interfere with or abolish the domestic institutions therein.

An amendment to the Constitution, such as that now proposed would be accepted by the Border States as an earnest of the good faith of the Northern States to preserve to them for all time their conceded rights. I would therefore respectfully and earnestly recommend the adoption of the resolution herewith communicated.

E. D. MORGAN."

The resolution proposed the following amendment to the Federal Constitution:

"*Resolved,* That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes, as a part of the said Constitution.

Article 13. No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."

March 21. To the Legislature: Transmitting a resolution adopted by the Legislature of Indiana on the 11th

instant, recommending that Congress call a Convention of the States to consider amendments to the Federal Constitution.

April 6. To the Assembly: Transmitting a report of the Commissioners under the act for the relief of the people of Kansas. [See Assembly Document No. 140. See note 19.]

April 8. To the Senate:

Veto of a bill entitled "An act to facilitate the construction of the Albany and Susquehanna railroad."

"This bill proposes to donate to the corporation named, the sum of five hundred thousand dollars; one half payable on the completion and equipment of thirty miles of their road, and the remainder when forty additional miles thereof shall have been put in operation.

To meet the required sums, a tax of three-sixteenths of a mill on each dollar of the valuation of the real and personal property of this State, is imposed for each of the fiscal years commencing on the first day of October, in 1861 and 1862. If the tax thus imposed produces more than five hundred thousand dollars, the additional amount so realized is to be paid to the company in aggregation of the second installment.

These are, substantially, the provisions of the bill; and, in so far as it provides the means for the payment of the demands it creates upon the treasury, it obviates a defect which existed in the bills passed in aid of the same corporation by previous Legislatures.

In assigning my reasons for withholding my assent from the bills passed at the last and the preceding sessions 'to facilitate the construction of the Albany and Susquehanna railroad,' the conviction was distinctly expressed that, such a donation of the public money as was therein made, fell clearly within the requirement of section nine, article first

of the Constitution, which declares that 'the assent of two-thirds of the members elected to each branch of the Legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes.' Upon both occasions it was stated that the bills 'lacked the constitutional vote necessary to give them vitality,' inasmuch as they had not, in either instance, received 'the assent of two-thirds of the members elected to each branch of the Legislature.' At the same time I stated that it was 'within the power of the two houses to obviate this palpable objection to the bill under consideration, by conforming their action to the requirements of the Constitution in the particular mentioned.' The objections urged were sustained by the Legislature on each of the occasions referred to.

I call attention to these facts to show that there has been no concealment of my views on this point of constitutional construction; and especially because the bill herewith returned comes to me with the certificate of the presiding officers in both branches of the Legislature, showing it to have been passed by the concurrence of a 'majority of the members elected to each house, three-fifths being present.' Having, therefore, received but a majority of affirmative votes, and not two-thirds, my objection applies with the same force against the present as against the former bills for the same object, in this respect.

Since the bill was delivered to me, I have carefully examined the precedents and impartially weighed the arguments submitted for my consideration, and zealously urged by those whose views, in this regard differ from my own. But it is sufficient for me to say, that my convictions on this point have undergone no modification. On the contrary, reflection has but served to deepen them; and, hence, no alternative remains to me save either to violate the dictates of my judgment and conscience, or to withhold my signature from the bill.

In deciding upon the latter course, I claim only the same right of judgment which I freely concede to others. I admit as readily as any person can, the claims of the section through which this road is to be constructed, to a participation in the bounty of the State. Whilst I am frank to admit that, in view of the existing posture of public affairs, I cannot regard the present as an auspicious time in which to prosecute new works of improvement, or to add to the already heavy burthens of tax-payers, I could yet waive my views of mere policy in deference to the wishes of the representatives of the people in the co-ordinate branches of the Legislature. But, when the question involved, is one of constitutional duty, and of fealty to that oath which places the requirements of the Constitution above all considerations of utility or precedent, I can see but one path of duty, and that is obedience to conscientious convictions.

These convictions, heretofore repeatedly expressed, must govern my action on the present occasion. Regarding the bill now returned, as appropriating the public money for a local and private purpose, in donating five hundred thousand dollars to the Albany and Susquehanna railroad company, without having 'received the assent of two thirds of the members elected to each branch of the Legislature,' as required by article first, section nine of the Constitution, my signature is withheld therefrom, and it is returned to the Senate, with these my objections."

The bill was not passed over the veto.

April 10. To the Assembly: Transmitting the following resolutions adopted by the Legislature of Arkansas on the 20th of March, relative to federal affairs:

"We, the people of the State of Arkansas, in convention assembled, in view of the unfortunate and distracted condition of our once happy and prosperous country, and of the alarming dissensions existing between the northern and

southern sections thereof, and desiring that a fair and equitable adjustment of the same may be made, do hereby declare the following to be just causes of complaint on the part of the people of the Southern States against their brethren of the Northern, or non-slaveholding States:

1. The people of the Northern States have organized a political party, purely sectional in its character; the central and controlling idea of which is hostility to the institution of African slavery, as it exists in the Southern States, and that party has elected a President and Vice-President of the United States, pledged to administer the government upon principles inconsistent with the rights, and subversive of the interests of the people of the Southern States.

2. They have denied to the people of the Southern States the right to an equal participation in the benefits of the common territories of the Union, by refusing them the same protection to their slave property therein that is afforded to other property, and by declaring that no more slave States shall be admitted into the Union. They have, by their prominent men and leaders, declared the doctrine of the irrepressible conflict, or the assertion of the principle that the institution of slavery is incompatible with freedom, and that both cannot exist at once, that this continent must be wholly free or wholly slave. They have, in one or more instances, refused to surrender negro thieves to the constitutional demand of the constituted authority of a sovereign State.

3. They have declared that Congress possesses, under the Constitution, and ought to exercise, the power to abolish slavery in the territories, in the District of Columbia, and in the forts, arsenals and dockyards of the United States, within the limits of the slaveholding States.

4. They have, in disregard of their constitutional obligations, obstructed the faithful execution of the fugitive slave laws by enactments of their State Legislatures.

5. They have denied the citizens of Southern States the

right of transit through non-slaveholding States with their slaves, and the right to hold them while temporarily sojourning therein.

6. They have degraded American citizens by placing them upon an equality with negroes at the ballot box.

To redress the grievances hereinbefore complained of, and as a means of restoring harmony and fraternal goodwill between the people of all the States, the following amendments to the Constitution of the United States are proposed:

1. The President and Vice-President of the United States shall each be chosen alternately from a slaveholding and non-slaveholding State — but, in no case, shall both be chosen from slaveholding or non-slaveholding States.

2. In all the territory of the United States now held, or which may hereafter be acquired, situate north of latitude 36 deg. 30 min., slavery, or involuntary servitude, except as a punishment for crime, is prohibited while such territory shall remain under territorial government. In all the territory now held, or which may hereafter be acquired, south of said line of latitude, slavery of the African race is hereby recognized as existing, and shall not be interfered with by Congress, but shall be protected as property by all the departments of the territorial government during its continuance. And when any territory, north or south of said line, within such boundaries as Congress may prescribe, shall contain the population requisite for a member of Congress, according to the then federal ratio of representation of the people of the United States, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without slavery, as the constitution of such new State may provide.

3. Congress shall have no power to legislate upon the subject of slavery, except to protect the citizen in his right of property in slaves.

4. That in addition to the provisions of the third para-

graph of the second section of the fourth article of the Constitution of the United States, Congress shall have power to provide by law, and it shall be its duty so to provide, that the United States shall pay to the owner who shall apply for it, the full value of his fugitive slave in all cases when the marshal or other officer whose duty it was to arrest said fugitive, was prevented from so doing by violence; or when, after arrest, said fugitive was rescued by force, and the owner thereby prevented and obstructed in the pursuit of his remedy for the recovery of his fugitive slave, under the said clause of the Constitution, and the laws made in pursuance thereof. And in all such cases, when the United States shall pay for such fugitive, they shall have the right, in their own name, to sue the county in which said violence, intimidation or rescue was committed, and to recover from it, with interest and damages, the amount paid by them for said fugitive slave. And the said county, after it has paid said amount to the United States, may, for its indemnity, sue and recover from the wrong doers or rescuers, by whom the owner was prevented from the recovery of his fugitive slave, in like manner as the owner himself might have sued and recovered.

5. The third paragraph of the second section of the fourth article of the Constitution, shall not be construed to prevent any of the States from having concurrent jurisdiction with the United States, by appropriate legislation, and through the action of their judicial and ministerial officers, from enforcing the delivery of fugitives from labor to the person to whom such service or labor is due.

6. Citizens of slaveholding States, when traveling through or temporarily sojourning, with their slaves, in non-slaveholding States, shall be protected in their right of property in such slaves.

7. The elective franchise and the right to hold office, whether federal, State, territorial or municipal, shall not be exercised by persons of the African race, in whole or in part.

8. These amendments, and the third paragraph of the second section of the first article of the Constitution, and the third paragraph of the second section of the fourth article thereof, shall not be amended or abolished without the consent of all the States.

That the sense of the people of the United States may be taken upon the amendments above proposed:

Resolved, by the people of Arkansas, in convention assembled, That we recommend the calling of a convention of the States of the Federal Union, at the earliest practicable day, in accordance with the provisions of the fifth article of the Constitution of the United States.

Resolved further, That the President of this Convention transmit to the President and Congress of the United States, and to the Governors and Legislatures of the several States, a copy of these proceedings.

Resolved further, That looking to the call of a national convention as recommended in the first resolution above, this Convention elect five delegates to represent the State of Arkansas in such convention.

Resolved further, That a committee of five delegates of this Convention be appointed to prepare an address to the people of the United States, urging upon them the importance of a united effort on the part of the patriotic citizens of all sections and parties, to save the country from the dangers which impend it, and which threaten its destruction — and especially, to arrest the reckless and fanatical spirit of sectionalism North and South, which, if not arrested, will inevitably involve us in a bloody civil war."

April 15. To the Assembly:

"ALBANY, *April* 15, 1861.

"The proclamation of the President of the United States, which the telegraph brings to us this morning, calling forth the militia of the several States of the Union, in order to suppress powerful combinations, and to cause the laws now

set at defiance to be duly executed, shows the imminence of national dangers.

It is not doubted that New York will be at once called upon for a large quota of militia. It would seem, therefore, most clearly to be the part of wisdom, no less than the dictate of patriotism, that a military force be authorized sufficiently large to meet the present and prospective demands of the General Government; and to place such force at the disposal of the Federal authorities. I would, therefore, respectfully, though earnestly, urge that the Legislature, without delay, confer larger discretionary power than is now possessed to embody and equip a volunteer militia for the public defence, and to provide the necessary means therefor.

Let not New York falter in this hour of the country's peril; but let her make all needful preparation to respond to the Nation's call with that promptness which comports with her past history, and with her present position in the sisterhood of States. [See note 7.]

E. D. MORGAN."

April 16. The Legislature adjourned without day.

1862. JANUARY 7. LEGISLATURE, EIGHTY-FIFTH SESSION.

EDWIN D. MORGAN, Governor.

ANNUAL MESSAGE.

To THE SENATE AND ASSEMBLY.— In the presence of events so momentous as those now surrounding us, we can but realize that man's strength is weakness, his wisdom foolishness, and human forecast a mockery. It is most fitting, therefore, that we seek the favor of the great source of all power and knowledge, and implore the counsel of Omniscience in our deliberations. Let us remember that from

devastation and bloody strife, God restores the wasted land and evokes peace; while from a condition of apparent prosperity and mutual faith, He may permit the spirit of discord to enter, and suddenly bring a whole Nation to the verge of humiliation.

In communicating to you the condition of the State, I acknowledge with feelings of the profoundest gratitude the blessings of Almighty God in preserving the public health, in rewarding the labor of the husbandman, in prospering the great industrial and commercial interests, and saving the popular mind from all tendencies to disorder. But beyond our beloved State, truths, the most painful, force themselves upon us. Abroad, those nations whose friendship we have for generations cordially cultivated and desired, whose rights we have scrupulously observed and whose sympathy we had expected, have turned coldly upon us in our trials, and with a perversity that causes more of sorrow than of anger, will not understand the vital questions underlying our difficulties. At home, the year 1861 has been the most eventful in the annals of the American Union and of constitutional freedom. It has just closed on a great nation, torn by Civil War, and threatened in its very existence. The calamitous strife that has marked it has deepened into tragedy, and the present year opens at a period big with interest to ourselves and consequences to our posterity.

Without stopping to consider antecedent facts, we behold a rebellion of extraordinary proportions, menacing the safety of a government, whose common benefits have made us a free and prosperous people, and given us an honored name in every land and on every sea. A vast army alone keeps back this beleaguering tide, saves the national capital, protects the persons of the lawfully chosen Chief Magistrate and his constitutional advisers, and preserves the public archives.

New York has been no idle spectator of the progress of

the insurrection. She responded to the first summons to protect the endangered Capital, and to-day one hundred thousand of her brave sons bear aloft the banner of the Union, in and near the rebellious States. From her imperial resources vast supplies have been drawn for the war. Her bankers, and particularly those of the city of New York, with a patriotism and an enlightened confidence, which is a wonder to Europe, and a marvel to ourselves, have furnished a most important element to the government. She has freely contributed from her public treasury, as well as in the cities and towns, through formally organized action of private citizens, and through the less formal means of individual benevolence. The care of the families of Volunteers has been assumed by municipalities, by villages and by individuals. The cord of brotherhood has been strengthened by our public grief, and this dire calamity has afforded the American people a sad opportunity to vindicate themselves from the calumny of national selfishness. The spirit of universal liberality and fraternal kindness will everywhere be accepted as convincing evidence of the moral integrity of the people in this hour of trial, of unalterable attachment in their institutions, and determination that not one jot or tittle of national rights or dignity or manhood shall be surrendered. The commanding position of this State, never so obvious as in this struggle, renders her voice potential in a great crisis like this. For the time being, you are to give utterance to that voice. I am sure it will be no uncertain one.

During the year the administration of justice and the execution of the laws have been prompt and universal. Our State credit, an index of abiding confidence in the Governor, never stood higher than now, and though drawn upon for the war, our finances, as will appear from the exhibit which I now submit for your consideration, are in a satisfactory condition.

There was in the Treasury, on 1st October, 1860	$3,299,537.49
Received from all sources for the fiscal year	16,942,977.53
	$20,242,515.02
Payments	17,167,573.17
Balance on September 30th, 1861	$3,074,941.85

The debt of the State, on October 1st, 1861, was:

Of General Fund Debt	$6,505,654.37
Of Canal Debt	26,081,610.25
Making a total of	$32,587,264.62

The Stock or Funded Canal Debt outstanding on September 30th, was authorized by the Constitution as follows, viz:

	Principal.	Annual Int. of
Article 7, section 1	$9,739,024.76	$532,341.48
do 7, do 3	13,200,000.00	782,000.00
do 7, do 10	642,585.49	34,629.28
do 7, do 12	2,500,000.00	150,000.00
	$26,081,610.25	$1,498,970.76

During the last fiscal year, that portion of the Canal Debt recognized by section one, of article seven, of the Constitution, has been reduced by the payment of $982,974.23 of the principal from the constitutional Sinking Fund, arising from the canal revenues. It will be further reduced before the 30th of September next by the redemption of two million, one hundred thousand dollars of maturing stock from funds applicable to that purpose; leaving due, after that period a principal of twenty-three million nine hundred and

eighty-one thousand six hundred and ten dollars, and twenty-five cents, with an annual interest thereon of one million three hundred and eighty-one thousand, nine hundred and seventy dollars, and seventy-six cents. An average annual reduction, past and prospective, of more than one and a half million of dollars, is thus shown; and it is confidently believed, that the stock amounting to seven million seven hundred and thirty-nine thousand and twenty-four dollars, and seventy-six cents, maturing previous to January, 1871, will be met as it falls due from the surplus revenues of the canals set apart by the Constitution for that specific purpose.

Years of taxation and disappointment in relation to the cost and income of the canals, will give to the exhibit presented below more than usual interest. This shows a gain in the Canal revenues of nine hundred and eighty-six thousand and thirty-nine dollars, and ninety-one cents, and at the same time a reduction in the expenses of forty thousand one hundred and ninety dollars, and sixty-four cents, making a total net gain over the past fiscal year of one million and twenty-six thousand two hundred and thirty dollars, and fifty-five cents.

Revenues.

From tolls on the Erie canal	$3,020,153.31	
Champlain canal	106,561.00	
		$3,126,714.31
Oswego canal		131,458.38
Cayuga and Seneca canal		18,778.32
Chemung canal		15,319.04
Crooked Lake canal		699.94
Chenango canal		23,397.24
Black River canal		6,112.73
Genesee Valley canal		29,189.60
Oneida Lake canal		218.86
Baldwinsville canal		22.57

Oneida River improvement.....	$919.63
Seneca River towing path.....	190.38
Cayuga inlet.....	147.97
Total from Canal tolls.....	$3,353,168.97
From rent of surplus water	4,865.00
From interest on current revenue, &c.....	44,594.33
	$3,402,628.30

Expenses.

Payments to superintend'ts for repairs.....	$106,611.51	
To contractors for repairs.....	260,995.33	
To Canal Commis'rs for repairs, &c.....	224,957.28	
To collectors for salaries, clerk hire, pay of assistant collectors, inspectors, and expense of collectors' offices	62,345.55	
To weigh masters.....	8,111.30	
For salary of Auditor and clerk hire in Canal Department, salary and extra clerk hire of State Engineer, refunding tolls, printing and miscellaneous payments.....	43,765.17	
		706,786.14
Surplus revenues.....		$2,695,842.16

The revenues have followed the direction contemplated by the Constitution, which is in order as follows, viz:

1st. To pay the expenses of collection, superintendence and ordinary repairs of Canals, as above.....	$706,786.14

2d. Transferred to Sinking Fund under article 7, section 1st of the Constitution..		$1,700,000.00
3d. Transferred to Sinking Fund under article 7, section 2 of the Constitution.....		350,000.00
4th. The remaining surplus transferred to the Sinking Fund under article 7, section 3 of the Constitution.....		645,842.16
		$3,402,628.30

Cash Statement.

Balance in the Treasury and invested on the 30th of September, 1860.....		$2,375,017.76
Received, viz:		
For canal tolls, rent of surplus water, interest on revenue, &c.....	$3,402,628.30	
For proceeds of loans and premiums.....	1,216,883.50	
For proceeds of taxes.....	840,552.28	
For miscellaneous.....	145,183.84	
		5,605,247.92
		$7,980,265.68
Paid, viz:		
For redemption of stocks..	$2,175,551.23	
For interest on stocks.....	1,505,304.64	
To Canal Commissioners, repair contractors, superintendents, collectors, and weighmasters.....	1,626,821.76	
Miscellaneous.....	67,966.80	
		5,375,644.43

Leaving a balance to the credit of the Canal Fund on the 30th of September, 1861, of		$2,604,621.25
Of this balance there was on deposit in banks to the credit of the Treasurer on account of the Canal Fund	$2,435,845.04	
Of investments held in trust by Auditor:		
Bank Fund stock	37,743.15	
New York State and Canal Stock	106,880.00	
Of real estate securities:		
Walter Joy's bank	20,354.06	
Bank of Corning	3,799.00	
		$2,604,621.25

Of this balance, the sum of four hundred and eighty-nine thousand, five hundred and thirty dollars and twenty-nine cents, was not available, it being the aggregate of the canal deposits in insolvent banks; but, since the first of October, a portion of this amount has been paid into the treasury, and it is estimated that the ultimate loss on deposits in suspended banks will not exceed two hundred thousand dollars. Since the termination of the fiscal year and up to the close of the calendar year, the revenue from canal tolls was one million nine hundred and eighty thousand four hundred and ninety-seven dollars and forty-nine cents, the expenses of collection and repairs about two hundred and nineteen thousand and sixty-two dollars and sixty cents, and the available balance in the treasury and the several deposit banks on the 1st instant was three million nine hundred and fifty-one thousand four hundred and twenty-seven dollars and forty-seven cents.

By the opening of navigation the enlarged canal will be completed throughout its whole extent. The circumstances of the country are such as to give to this fact its highest importance. To those Boards, Commissions, and State officers whose duties have connected them with this work, and with operating the canals, the people owe their thanks, and especially so to the Canal Board and the Auditor of the Canal Department. The completion of this work should lessen the engineering expenses in an important degree. The system of contracting for repairs of the canals is found to materially decrease the yearly expenditure, but the structures become deteriorated, and at the end of no inconsiderable period the State will be obliged to make good the annual depreciation by new structures at large cost. I would therefore recommend that such change in the law, governing the letting of canal repairs, be made as shall require that no sections be let without giving notice by advertisement, and the contractor be required to give ample security that he will leave his section in as good condition as he found it; and further, that every section be inspected by the proper officer when it is surrendered, and any depreciation be enforced against the contractor.[1]

The railroads have seriously diverted business from the canals. The extent of this is most marked in westward-bound freight. Of the revenue of three million nine hundred and seven thousand six hundred and seventy-seven dollars, received during the last navigation season, only two hundred and eighty-three thousand two hundred and seventy-two dollars were collected at the cities of New York and Albany, and at West Troy and Waterford, on freight bound westward and northward, while the tolls at Buffalo and Oswego on freight eastward bound were two

1 Chapter 348, passed April 19, regulated the publication of notices of canal contracts in the State paper, and also in newspapers published in the division districts in which the work or portion of the canal intended to be let was located.

million seven hundred and five thousand eight hundred and twenty-three dollars, or nearly twelve times more. There can be no question that the carrying of the merchandise, which forms the bulk of westward freight, is almost exclusively enjoyed by the railroads. In 1851, before tolls were removed from railroads, there were three hundred and sixty-five thousand tons of merchandise carried on the canals, paying eight hundred and seventy-seven thousand dollars in tolls, while in 1860 there were but two hundred and fifty thousand tons transported, paying only two hundred and twenty-three thousand dollars, or a reduction of nearly seventy-five per cent. This results from no diminution of this class of the carrying traffic, for the annual report of the State Engineer and Surveyor on railroads will show that the business of the railroads has largely increased in the transportation of merchandise. In 1851 the tolls on merchandise formed thirty-five per cent of the revenues of the canals; in 1860 it was but seven and one-half per cent.

To make the business of the canals depend so exclusively on the products of the forest and vegetable food, is to assume the largest risks. The carriers of merchandise have an assured business even in seasons of partial crops, of low prices or fluctuating markets, but that means of transit whose business is restricted to transportation in a single direction of coarse staples may, by a contingency, find its traffic reduced below the cost of the service. While our canals will always be large carriers, yet undue competition may divert their legitimate business in desirable traffic to such an extent as to disqualify them from meeting their constitutional demands.

The largely augmented revenue of the canals, while due in a degree to increased tonnage, is principally owing to the enhanced rates of toll. Although much effort was made to reduce the tolls, yet the Canal Board of 1861 wisely retained the schedule of 1860, increasing the rates on some

articles. There may be periods when rates unfavorably affect the business of transportation on the canals; it is certain that last year was not one of these, neither do I believe the present year will be. Experience conclusively shows that reductions in toll, although made avowedly to retain to the canals the business which might fall to other modes of transit, result in loss of revenue. It is clear that our true policy lies, not in the direction of striving for employment at unremunerative prices, but in protecting the canals in their legitimate business, and demanding proper tariffs for their use. In what manner this shall be accomplished, I have endeavored to point out in former messages. After presenting these facts, I can most safely leave the important question to you, who have so recently come from the people and know their views.[2]

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2 The statutes passed at this session made the usual appropriations for canal purposes, including completing, maintenance, administration, sinking fund, interest, and payments to contractors. Chapter 415, passed April 22, provided for adapting the canals for defence of the northern and northwestern lakes. Whenever funds should be furnished by the federal government for that purpose, locks and structures were to be enlarged and improved sufficiently to allow the passage of vessels adequate to the defence of the northern and northwestern lakes. The act further provided that "on completing the said work on either of the said canals, the government of the United States shall have the perpetual right of passage through the canals thus enlarged or built, free from toll or charge, for its vessels of war, boats, gun boats, transports, troops, supplies or munitions of war, subject to the general regulations prescribed by the State from time to time, for the navigation of its canals."

The Legislature on the same day adopted a concurrent resolution directing the Governor to transmit a copy of the act to the President, and to take such steps as might be proper for the purpose of bringing the matter to the attention of the general government.

On the 6th of May, Governor Morgan appointed Samuel B. Ruggles, a commissioner to present to the federal government the subject of the enlargement of the canals for the purposes indicated in the statute. The following is the letter of appointment:

NEW YORK, *May* 6, 1862.

Hon. SAMUEL B. RUGGLES,

Sir:—Your knowledge of the canal system of this State, your experience in the use and management of our canal property, as well as your intelligence and patriotism, lead me to believe that I can best carry into effect the

The General Fund Debt remains unchanged. The principal is six million five hundred and five thousand six hundred and fifty-four dollars and thirty-seven cents. The annual interest thereon is three hundred and sixty-seven thousand eight hundred and twenty-seven dollars and fifty-eight cents, of which three hundred and fifty thousand dollars is chargeable by the Constitution upon the General Fund Debt Sinking Fund;[a] but owing to the temporary inability of the Canal Fund to pay into the treasury, from its surplus revenues, this sum to the Sinking Fund, the interest for four years preceding the last was paid from the General Fund revenue. Last year the increase in the Canal revenue was again sufficient to meet this obligation. To the Legislature of 1861, for the first time in a quarter of a century, the Comptroller was enabled to show a balance to the credit of the General Fund; and the considerate policy, in the main, of the Legislature of last winter in regard to appropriations, enables me to state that a balance of fifty-three thousand seven hundred and fifty dollars and fifty-one cents, stood to the credit of this fund at the close of the fiscal year ending with September last.

The State tax of three and five-sixths of a mill, levied in 1860, has been paid into the public treasury. The net

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resolution of the Legislature by asking you, if consistent with your numerous duties, to devote as much time as may be necessary for the purpose of visiting Washington, and presenting the subject proposed in the law recently passed by the Legislature of New York (for adapting the canals of this State to the defence of the northern and northwestern lakes), to the consideration of Congress.

You will choose your own time and manner for accomplishing the object sought. I shall be glad to have a report from you after your return to this city. I expect to leave for Albany to-morrow.

I am, with much respect,

Your obedient servant,

E. D. MORGAN.

For the continuation of this subject, with the report from Mr. Ruggles, see the special message of April 8, 1863, and accompanying documents, and note 12, *post*, p. 501.

Two resolutions were adopted at this session (1862) concurring in rates of toll established by the canal board.

[a] Const. 1846, art. 7, § 2.

amount was five million three hundred and ninety-seven thousand five hundred and twenty-four dollars and forty-five cents. This sum includes the ordinary levy of a million and sixty-four thousand dollars for schools, and two million seven hundred and fifty-one thousand dollars for the Canal Fund; the remainder is for the support of government. The Legislature authorized a direct tax of four and three-eighths mills for 1861. Of this, three quarters of a mill was for schools, three quarters for canals; seven-eighths for general purposes, and two mills for defraying the expenditures under the act authorizing the embodying and equipment of a volunteer militia, and to provide for the public defence. Anticipating an installment of forty per cent. from the Federal treasury upon the advances made by the State (which has been received), the Comptroller, to whose discretion the question was left by law, caused the levy for war purposes to be reduced to one and a half mills. The direct tax for the present year will therefore be three and seven-eighths mills on each dollar of the taxable property of the State.

The defects in the assessment laws are found to be such as to throw more than three-fourths of the burden of taxation upon real estate. This is evidently unjust. The whole property of the State, personal as well as real, should be made to pay its due share of the cost of government. As such is not now the case, the importance of a revision of the statutes relating to assessments is manifest, and especially so at this time, in view of the large prospective taxation to be apportioned by the General Government to this State, required for the expenses of the war, and which is laid only on real estate. Our laws relating to the assessment and collection of taxes were, in the main, enacted nearly a half century ago, when property consisted mostly of lands. The amendments which have been made from time to time have been so imperfectly drawn that, by resorting to expedients, the owners of per-

sonal property have been enabled to escape taxation. In some of the States, taxpayers are required to make sworn inventories of their personal property. It remains for you to say whether or not this mode, or some other equally efficient one, shall be adopted in this State. The manifest partiality shown to personal estate should at once engage your attention. The annual report of the State Assessors, presenting their views on this subject, together with tables of valuation and other important exhibits, will be early communicated to you; and to that I refer you for valuable data. From this it will appear that the total valuation of real estate in 1861 is $1,121,134,480, being an increase of more than $1,000,000 over the preceding year; while a decrease of nearly $7,000,000 in valuation of personal property is shown.

In this connection I feel it to be my duty to allude incidentally to the subject of the extension of time for the collection of taxes, and to respectfully refer to my former annual and special messages in relation thereto; time and experience having strengthened and confirmed the opinions therein expressed.

The acts of April 14th, 1860, and April 17th, 1861, in relation to capital punishment should be repealed, with a careful saving as to all offences heretofore committed. If not repealed they should be essentially modified. Questions of the most serious importance have been raised in regard to certain provisions of these acts. There is evidently a settled purpose in the public mind to divide the crime of murder into two grades, only the most heinous of which to be punished with death. This change has my decided approval, and would, I believe, serve to meet many of the objections to existing laws. A law should be passed containing a new definition of murder in the first degree, confining it to poisoning, killing by lying in wait, and killing where there was a deliberate design to effect death, formed by the accused prior to the meeting between the accused

and the deceased on the occasion of the assault that proved fatal. This would exclude all constructive murders and render punishment more certain. Aside from all other serious objections, the definition of murder in the first degree, in the Acts to which I have referred, includes offences involving no more moral guilt than the commission of an assault and battery. I commend the subject to your early consideration.[3]

Last year I fully stated my views respecting the pardoning power, which subsequent observation has served to justify. During the year 1861 there were presented to me four hundred and two applications for pardon; added to this number were ninety-five cases undecided on the first of January last, and forty-seven applications for re-examination, and a total for examination of four hundred and forty-four is thus produced. Of these I have pardoned sixty-six; have denied four hundred and two; have commuted fifteen; discharged by court and terms expired, forty-one; leaving twenty undecided at the termination of the year, in consequence of incompleteness of papers.

In 1861, I recommended the passage of a law providing for the appointment of a commission to inquire into the system of our prison management, with reference alike to discipline and economical administration. The Legislature, probably for want of time, omitted to take any action on the subject. Finding, in the latter part of the summer, that the duties connected with the raising and equipping of volunteers for the service of the General Government, were such as would prevent me from making my annual visit to the prisons; and in view of the fact that the derangement of the business of the country might ultimately cause, if it had not already produced, embarrassment in the prison finances, and also incidentally affect the dis-

[3] Chapter 197, passed April 12, repealed the acts of 1860, chap. 410, and 1861, chap. 303, divided the crime of murder into two degrees and prescribed the punishment of arson.

cipline of the prisons, I deemed it advisable to request the Superintendent of the Albany County Penitentiary, whose long, intimate and successful connection with penal institutions peculiarly qualified him for the duty, to visit the State prisons, to examine into their police and fiscal management, and to report the result of his observations to me in writing. This he has done. I desired him to make suitable inquiries in regard to the alleged severity of punishments inflicted at Sing Sing, and respecting the administration of the affairs of the Lunatic Asylum connected with the prison at Auburn. I also requested him to make such inquiries as would enable him to determine if the recent murder committed at Clinton prison was the result of any want of proper foresight, or of any insufficiency in the rules or discipline of the prison. The result of his examinations, though necessarily only partial, shows the need of a commission of the character above named.[4] As will be seen below, the actual receipts are fully a quarter of a million of dollars less than the expenses of the prisons. This difference is increased of course beyond what it would be in ordinary times, but is due in a great measure to the mode of contracting the labor of convicts. I would not be understood as underrating the ability or faithfulness of the several officers to whose hands are confided the general and local administration of prison affairs. They have exhibited much interest and have put forth active efforts to preserve order and to render the prisons productive; but the disciplinary and fiscal systems are of many years' standing, and every test proves them to be very faulty. It does not appear possible that able-bodied men, of ordinary intelligence, sentenced in every case for at least two years, and occupying quarters valued at more than a million and a half of dollars, should be unable to meet their support. The subject is certainly of a nature to invite the most scrutinizing attention. It is my deliberate opinion that,

[4] See special message of March 14, for Superintendent Pilsbury's report.

when the Constitution shall admit of the change, it will be wise to substitute for the three inspectors of prisons one superintendent, to be appointed by the Governor and Senate, leaving to the wardens the duty, under proper regulations, of contracting for the convict labor and of controlling the government and internal management of the respective prisons.[5]

Discipline, and reformation of the convict, are questions of primary importance in our prison system, and should engage the most serious attention. The subject of finances, though but secondary in comparison, is entitled, especially at this time, to the most careful consideration.

The total expenditure for the prisons during the last fiscal year, including forty-four thousand one hundred and seventy-nine dollars for building and permanent repairs, was three hundred and eighty-seven thousand one hundred and forty-three dollars and sixty-five cents. The amount of earnings paid into the State Treasury was but ninety-two thousand nine hundred and thirty-nine dollars and eleven cents. A large sum, however, remains due from the contractors for convict labor. Should application be made to you, too much caution cannot be exercised in entertaining the subject of releasing contractors. Serious injustice has heretofore resulted to the State from interference with obligations of this character. For details respecting commitments and discharges of prisoners, the special care and management of the prisons, I refer you to the annual report of the inspectors.

The three prisons have recently been enlarged, and it is expected that no further appropriations for this purpose will soon be required.

It has been suggested that a small percentage of the earnings of convicts be placed to their credit, and paid

[5] A plan of prison administration under the supervision of a superintendent was adopted in 1876, and is embodied in the Constitution in article five, section four.

them on their leaving the prison. There is good reason for believing that future crime would often be prevented, if this were done. Many of the discharged convicts are without friends, and nearly all of them are dependent upon the labor of their own hands for support. Not unfrequently, before procuring employment, or their good resolutions have acquired sufficient strength, their slender means are exhausted, and they choose unfavorably between beggary and theft.[6]

The following is a statement of the number of convicts in the prisons on the 31st of December, viz:

Auburn prison	829
Auburn Asylum for Insane convicts	79
Sing Sing prison, males	1,277
Sing Sing prison, females	135
Clinton prison	512
Total number	2,832

There were in the Asylum for Insane convicts, at Auburn, on the 31st of December, seventy-nine patients. With so limited a number of inmates, requiring a relatively large attendance of officers, the expenses of the institution, even with the strictest economy, will be proportionately large. In this connection, your attention will be called, in the annual report of the Inspectors, to a class of criminal insane, confined in county jails, whose mental condition deserves notice. I recommend you to make suitable provision for removing those of this class most seriously diseased to this Asylum, whom on the application of the district attorney, shall be ordered there by the presiding judge, to be treated at the expense of the respective counties.

[6] Chapter 417, passed April 22, 1862, embodied a scheme of commutation for good behavior, including the payment of a limited amount to a convict upon his discharge.

The system of higher education in the colleges and academies of the State continues in uninterrupted operation; and, though the spirit of patriotism, always ardent in the schools, has withdrawn professors and students from the peaceful pursuits of learning to the defence of their country, the number of pupils has not been more reduced than it has often been by financial embarrassment in times of peace. In many of these institutions military companies have been formed, and the students have attained a high degree of perfection in military drill. This is especially true of the State Normal School. Its physical and disciplinary effect has been most salutary—in the former respect even superior to gymnastic exercises. I recommend that works on military tactics be introduced as text books into these institutions, and that drill be made a part of the exercises. To enforce the observance of these requirements, the income of the Literature Fund should be awarded with reference to the proficiency and attention given to this branch of education.

During 1861, the aggregate attendance upon our common schools was about the same as for the year 1860. The expenditure for school buildings and improvements, is in excess of the preceding year. The deportment, health, and future usefulness of the pupils, in preserving, and, if need be, in protecting the institutions and rights of their country, would fully justify me in recommending that male pupils above the age of twelve years be instructed in the elements of military science for a portion of the year in all the schools supported at the public expense, provided it be practicable. It may be so in cities and larger villages; but in country districts, its feasibility is doubted. The subject is worthy your attention.

The building for the People's College is yet in progress. Numerous applications from this and other States have been and are still being made for admission. It is ex-

pected by the Trustees that all things will be in readiness for opening the institution next autumn.[7]

The Annual Statistical Reports of the Secretary of State on pauperism, and on criminal statistics, will afford you valuable data on those two topics.

The Superintendent of the Banking Department will be able to present a very satisfactory account of his responsible trust. During the fiscal year there was a decrease of about $1,852,000 in banking capital, which at the close stood at $109,982,324. The aggregate of the securities held in trust for the free banks was $30,213,780.59, or an increase of $18,318; while the aggregate circulation issued to free banks was $28,360,482, or a decrease of $380,934. In addition to this, it appears that $464,661.32 in bonds and mortgages have been withdrawn, and government and state stocks have been substituted therefor. Since the close of the fiscal year, about one million dollars in securities have been added, and the circulation has been increased between eight and nine hundred thousand. It will appear that six banks suspended during the fiscal year, with an aggregate capital of $1,464,560. The securities held in trust for their circulating notes were sold by the Superintendent, and all their outstanding circulation, with the exception of that of one bank, is in process of redemption at par. On this, with a circulation of $51,554, there was a loss to holders of seven per cent.[8]

The Superintendent of the Insurance Department will submit a detailed account of the several insurance companies, located and doing business in this State. From this it will appear that, with a single exception, no failure of Fire, Marine or Life Insurance Companies has occurred during the past year.

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[7] Chapter 469, passed April 24, appropriated $10,000 to be paid to the trustees of the People's College at Havana, in Schuyler county, on complying with certain conditions prescribed in the act.

[8] By chapter 62, passed March 27, incorporated banks were authorized to hold stocks of the State or of the United States.

The State Engineer and Surveyor will submit to you a report on the condition of the enlargement, and other matters connected with the canals; and also a report on the railroads of the State.

The inspection of salt at the Onondaga Salt Works, during the past year amounted to 7,200,391 bushels. This is in excess of any previous year. A duty on this production, at the rate of one cent per bushel, is payable into the treasury, and forms a portion of the permanent revenue of the General Fund. The expenses of the works, salaries of officers, and the cost of providing supplies of brine to the manufactories for 1861, was about forty-six thousand dollars. In his annual report the Superintendent will communicate information bearing upon the future of this important interest. I respectfully refer to my last annual message in connection with this subject.

The Superintendent of Weights and Measures has furnished me a carefully prepared statement of the articles and the condition of the public property under his supervision. From this it appears that all the counties of the State, with the exception of four, have been supplied, through him, with new or corrected standards of superior workmanship. The duties of this office are conducted with commendable economy.

There were landed of alien emigrants at the port of New York, during the past year, sixty-five thousand five hundred and twenty-one, against one hundred and four thousand three hundred for the year 1860. For the first four months of 1861 emigration exceeded the corresponding period of 1860 by several thousands, but during the latter half of the year there has been a large falling off; reducing the aggregate arrivals thirty-seven per cent. below the preceding year, and less than during any year since the organization of the Board of Commissioners. The reduction of income thus occasioned, has induced a rigid economy on the part of the Commissioners, who expect that, without

detracting from the usefulness of the commission, they will be able to support the institutions under their charge without assistance, until emigration shall again enable them to meet the ordinary demands upon their income. The report of the Commissioners will be presented to you in due time, and to that I refer you for valuable details.

A floating hospital for the treatment of yellow fever is proven, I think, by the experience of the past three years, to have advantages over fixed quarters. It is found to be not only better for the comfort and well-being of the sick, but safer and more economical. We can, therefore, at least safely postpone the purchase of lands, or the erection of costly edifices, or the employment of an expensive corps of salaried officers, for quarantine purposes, until the political troubles of the country are at an end. The report of the Quarantine Commissioners will present the affairs more in detail; but it is proper that I should call attention to the necessity for a suitable site of a warehouse for infected cargoes, as it is believed that this is the principal source of danger from yellow fever. The cost ought not to be large, as the requisite accommodations would be inconsiderable. The Commissioners will endeavor to impress upon you the necessity of a revision of the Quarantine laws. Authority should be given to sell the grounds lately occupied as a Quarantine station on Staten Island, and, in that case, to provide for a new boarding station at a suitable point elsewhere; to require the proper distribution of the sick, and to provide means therefor; to invest the Health Officer with control over the Floating Hospital; and for the permanent maintenance of anchorage ground for infected vessels in the lower bay during Quarantine season. The office of Physician of the Marine Hospital, which, since the resignation of the incumbent in June last, has been vacant, should be abolished, the salary of five thousand dollars heretofore paid should be saved to the emigrant fund, and the Health Officer be required to perform the few remaining duties free of expense.

The labors and responsibilities of the Metropolitan Police have temporarily been materially increased by the quartering within the district of large numbers of soldiers, and by the passage through and detention in the city of regiments from this and other states. Additional duties were also imposed at the last session of the Legislature. Without display, however, and in a manner to win still more fully the popular confidence, the police have preserved the public peace and faithfully performed the duties assigned them. The annual report of the Commissioners is now in my hands, and will be transmitted to the Legislature without delay. It embraces a large amount of important detail, and contains several recommendations for your consideration. There is an increase of four hundred patrolmen in New York—a number amply sufficient to protect life and property, and to repress any outbreak against the public peace. Statistics are therein given with reference to the sanitary police, and the examination of unsafe buildings and steam boilers (more than twenty per cent of which are found defective), and the mode of escape from and ventilation of tenement houses. The importance of frequent and careful examination of ferry boats plying in the harbor of New York, is established by the returns submitted with the report, which show that during the past year forty-four million six hundred and forty-one thousand eight hundred and ninety-five passengers were carried, with the loss of a single life, that of a fireman, while cleaning his engine. The Commissioners suggest the propriety of imitating European cities, in transferring to the police many duties now discharged by other functionaries, and thereby saving largely in expense while gaining in efficiency. The supervision of weights and measures, custody of the markets, inspection of streets, piers and bulkheads, and enforcement of laws for the government of the harbor, are those specially named. The duty of appointing poll clerks cannot with propriety remain vested in the Board,

but should be transferred to the supervisors of the counties. There are other points which will engage your attention. The standing of our State and country abroad depends, in no inconsiderable degree, upon the good order of the commercial metropolis, and a system of police which has proved itself, under trying circumstances and careful scrutiny, to be equal to the objects sought in its establishment, properly claims such legislative aid as experience has proved to be requisite.

The Board of Commissioners of Pilots have continued to satisfactorily discharge the duties devolved upon them by the several acts of the Legislature relating to the preservation of the harbor of New York. In their annual report, they will call your attention to several important subjects connected with the wharves, piers, slips and waters of the harbor of New York.

The number of vessels of all kinds, arriving at the port of New York, in 1861, was fifteen thousand and sixty, exclusive of river craft. To insure the proper care of these, it is necessary that the several harbor masters should be continuously at their posts. Such, however, has not been the fact during the past year, but as there is no law expressly forbidding these officers from absenting themselves, or from employing persons to perform their duties in their absence, there exists no authority for correcting a very obvious wrong upon the commercial public. I therefore renew the following recommendation contained in my last annual message:

"I think some amendments are necessary to chapter seventy-two, of the laws of 1850, relating to the harbor masters of the port of New York. The defect of the law is found to be in not prohibiting harbor masters from employing assistants to perform their duties, and from absenting themselves from their posts; and it is believed that these subordinates, to some extent, exact and receive illegal fees for berthing vessels. Stringent provisions against the

employment of assistants under any pretext whatever, and against demanding, receiving, offering, or paying gratuities, should be adopted."[9]

The practical operation of the act of April, 1857, reorganizing the Board of Port Wardens, seems to meet with general approval. No change will therefore be necessary. The annual report of the President of the Board shows that 10,844 surveys were made for the year ending with the thirtieth of November.

Marked progress has been made during the past year in developing the Central Park, although the expenditure was but about one-half as much as for 1860. The condition of a portion of the work commenced in the latter year, required its completion in order that it might be saved from damage. The great utility and growing beauty of this grand municipal enterprise have already given it a high value in the estimation, not of New York alone, but of the public at large.[10]

Benevolent institutions are springing up in every part of

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[9] Chapter 487, approved May 22, revised previous acts relative to the captain of the port and harbor masters, and provided for the appointment of a captain of the port and eleven harbor masters by the Governor and Senate. The port was divided into eleven districts, one harbor master being assigned to each, and the act expressly provided that "each of the said harbor masters shall remain in and perform the duties of the district or districts assigned to him by the captain of the port, and shall not absent himself from the cities of New York or Brooklyn without the written permission of the captain of the port. He shall not appoint any deputy or assistant, or delegate the powers of his office to any person or persons whatsoever."

This act was sustained in Roosevelt v. Godard (1868), 52 Barb. 533, as to the regulation of piers. Tinken v. Stillwagon (1878), 1 N. Y. City Ct. Rep. 390, also sustained the act as amended by L. 1865, chap. 586. Inman S. S. Co. v. Tinker (1876), 94 U. S. 238, held unconstitutional chapter 487, amended in 1865, chapter 586, as to New York tonnage.

[10] Chapter 46, passed March 25, authorized the Central Park Commissioners to set apart to the New York Historical Society the arsenal then in the park and needed adjacent ground for the purpose of establishing and maintaining therein by the said society, a museum of antiquities and science and a gallery of art.

our State, devoted to specialties. There could be no better evidence of the humane tendencies of our people than is afforded by this fact. Some of these have been instrumental already in accomplishing much good. I would specially mention the Children's Aid Society, organized in the city of New York, for the purpose of providing homes for vagrant and homeless children.[11]

The managers of the several charitable institutions of the State have reported to me their present condition, with a brief account of the administration of their respective trusts. The New York Institutions for the Deaf and Dumb,[12] and for the Blind; the Asylum for Idiots at Syracuse; and the Lunatic Asylum at Utica, have each been measurably prosperous, and I am glad to inform you that, with a single exception, they require no special legislation. As the usual annual report will be made to you from each, presenting a statement of its affairs in detail, I respectfully refer you thereto, for specific information.

In regard to these and all similar objects, seeking aid from the public treasury, I desire to repeat the following recommendations contained in my message of 1861:

"While the State should be exactly just, and while I should be unwilling to counsel a withdrawal of its patronage from the several charitable institutions which have hitherto enjoyed it, I would suggest the adoption of a more rigid system of accounting and economy with regard to them. The doctrine of strict accountability should apply as well to our charities as to any other interest. I am sure that no valid objections can be urged against this by those to whose hands the interests of these important establishments are committed; since it will afford to the people a satisfactory guaranty that the moneys appropriated to

[11] By chapter 258, passed April 17, the industrial schools established and maintained by the Children's Aid Society were authorized to participate in the distribution of the common school fund.

[12] The charter of the New York Institution for the Deaf and Dumb was renewed by chapter 360, passed April 19.

those objects have a proper direction. I would recommend that all applications for aid to State institutions, beyond that for usual and necessary support, should be carefully scrutinized, for it cannot be denied, that while their ordinary affairs have been generally managed with care, large expenditures have sometimes been made for mere ornamentation. If we keep constantly in mind the fact that the taxpayer is charged with the care and support of the poor of his own locality, and, in addition, willingly pays all that is required of him for these general purposes, applications for aid will be more carefully considered; and, by limiting the amount only to actual wants, we may be less liberal, but more just."

The New York State Inebriate Asylum at Binghamton is not yet completed. The report of the officers will afford some interesting detail in respect to the character of applications for admission.

The Society for the Reformation of Juvenile Delinquents, in New York, will also present to you a favorable annual report. Their buildings are completed, and the fullest efficiency of the institution is now being enjoyed.

The Managers of the Western House of Refuge, located at Rochester, will present you their report, showing a very satisfactory condition of affairs at that institution.

The Department of Public Charities and Correction has renewed to me the recommendations I made in my last annual message, to which I respectfully refer, and which I now repeat. The Commissioners very justly call attention to the fact that no provision has been made for the soldier who, after being disqualified, from wounds received in the service, has returned to the State, without pension or means of procuring proper medical attendance, and is left to depend upon the charity of the public. Congress ought, at once, to make suitable provision for this class of cases. Near the close of the last session of the Legislature, a bill providing for the more certain and guarded prosecution of

vagrancy and other petty offences in police courts in the city of New York, was presented for my signature. Such of its provisions as were indicated by the title were proper and desirable, but in some other respects it was so objectionable that I was unwilling to give it my approval. It provided that the several claims of the police justices to make their compensation equal to that allowed the city judge, should be liquidated from the revenues and receipts of the court, and be paid to them by the chief clerk of their own court; and, further, the incumbents were to be continued in office "until provision shall be made for their successors by appointment or election, as the convention to amend the Constitution shall determine." I was not willing to give validity to an act which permitted a subordinate to receive fees and compensate his superiors, without any check being put upon his acts. Not only was there more than one subject embraced in this bill, while but one was expressed in the title, but it doubled the compensation of the police justices, and made their official term depend upon a future contingency, which, as it might never happen, would give them an unlimited claim to the office.[13]

Agricultural interests have been more than usually prosperous. The products have been abundant throughout the State, and the remunerative rates have given increased business to the various modes of transportation in the direction of markets; at the same time the articles of human food have been so reasonable that plenty has been within the reach of the humblest laborer. Public policy alone would counsel us to foster this great source of happiness and national wealth.

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[13] According to the Senate journal this bill was sent to the Governor on the 12th of April. The Legislature adjourned on the 16th, before the expiration of the ten days allowed the Governor for the consideration of bills. The bill was therefore in the Governor's hands when the Legislature adjourned. The records of the Executive Department do not show any memorandum or other statement of reasons for the Governor's refusal to approve the bill, except those contained in this message.

I have heretofore recommended an enlargement of the powers of boards of supervisors. I believe that the public interest would be materially promoted by widening the scope of their legislative jurisdiction. But should this be done, I advise that it be coupled with a provision making it necessary, especially in counties where there are cities or large villages, to procure, before they can take effect, the approval of a designated county officer to all acts, ordinances or resolutions levying special taxes, or creating debts. It appears to me that, for several reasons, the county judge would be the proper officer to perform this duty.

I desire to call your attention to the necessity of at least two amendments to existing laws affecting the powers of supervisors and town boards; the one respecting the extension of time for the collection of taxes, when stayed by injunction; the other in relation to providing means for constructing bridges when destroyed by accident and for the extraordinary repairs of roads. As regards the former, it is shown by experience that the provisions of chapter 488, of the laws of 1851, should embrace and be made applicable to boards of supervisors in cases relating to the imposition and collection of taxes, and that, after the stay of proceedings is terminated, a period not exceeding the number of days during which such stay or suspension continued, should, after their making proper return, be allowed to collectors. As respects the latter recommendation, it is only necessary for the Legislature to provide for calling a special town meeting to vote upon the question of levying a tax or making a loan. In addition to this, it would be well to increase, under suitable restrictions, the amount now authorized by boards of supervisors. Each Legislature is obliged to spend much time, at serious disadvantage, in examining these subjects, often at the risk of legalizing debts whose propriety could more readily be determined by the

voters or local officers of the districts directly affected, and especially by those persons from whom the moneys are to be drawn. At present, under the plea that the town elections have passed, and no power exists for calling the electors together, or that the sum now authorized to be raised by boards is insufficient to meet the exigency, the Legislature is induced to assume responsibilities which belong to local officers, to whom it should be exclusively confined.

A cursory examination alone of the subject will show that more than seventy per cent. of the counties are proportionately, and all are actually, wronged by the present system of paying the cost of transportation of State prison convicts, and the expense of executing writs of requisition, from the State treasury. I have heretofore called special attention to this subject, and now renew the recommendation that the cost be made a county charge. There can be no doubt whatever of the justice of this policy.

A change is obviously necessary in the laws relative to excise, so as to ensure their enforcement, especially in regard to licenses. At present those who pay for licenses practically receive neither privilege or protection therefor.

I consider it unnecessary to repeat at length the views presented by me in former messages, in regard to the following subjects. I desire to say that reflection and observation have only served to confirm the propriety of the recommendations; and I therefore renew them: the conferring of larger discretion upon judges in fixing the terms of sentence of criminals; that aliens actually residing in this State be authorized to acquire, hold and convey real estate at their pleasure; that females convicted of crimes, involving imprisonment for a brief period, should be sent to the penitentiaries instead of the State prison; that a careful attention be given to the subject of public health, especially in the city of New York, and particularly to providing the necessary scientific sanitary supervision; that it be made

the special duty of some officer to enforce the law of April 12, 1853, providing for the care and instruction of idle and truant children; that a revision of the laws applicable to breaches of trust in various forms, and to persons acting in fiduciary capacities, has become necessary; that power should be given to the Governor to suspend for misbehavior, during the recess of the Senate, all officers where removal or suspension is not otherwise provided for.

I would earnestly ask your attention to the subject of the modification or enactment of city and village charters. They are generally ill-digested, and, except in special instances, entirely unnecessary. A well considered act or some amendments to the general law of 1847, would be far better calculated to secure the objects sought in village charters, than such as swell the size of our annual session laws. On reference it will be seen that the subject of city and village charters occupies two-fifths of the space of the last annual volume of laws.

The Constitution has determined that no private or local bill shall embrace more than one subject, and that shall be expressed in its title.[b] There is, evidently, a growing tendency to incorporate inconsistent provisions in local bills. This is clearly contrary to the spirit of the constitutional provisions. I respectfully ask your attention to this subject i making up the annual tax levy of the city of New York, and in other measures affecting the several cities of the State.

By the act of the sixteenth of February last, the sum of $50,000 was appropriated for the purpose of furnishing supplies and provisions for the relief of the suffering people of Kansas. The Governor, Comptroller and Secretary of State were constituted a commission to superintend and direct the expenditure of these moneys. A competent agent was employed by them, who, under their direction, at

[b] Const. 1846, art. 3, § 16.

once proceeded to carry out the provisions of the act. A report on the subject, made by the commissioners, will be found in the last Assembly documents, number one hundred and forty. The sum of thirty-eight thousand seven hundred and fifty-five dollars and seventy-seven cents was drawn from the Treasury, leaving unexpended, of the appropriation, eleven thousand two hundred and forty-four dollars and twenty-three cents.

An event which, in more peaceful times, would have excited the liveliest interest throughout the continent, has, owing to our deep solicitude about our domestic concerns, attracted scarcely more than a passing attention. I refer to the completion, in October last, of the Pacific telegraph line, connecting the Atlantic coast with the city of San Francisco. An enterprise of such magnitude, can well be classed among the wonders of the present age. Recognizing this as the forerunner of a railroad, uniting, at no distant day, the same points, and thereby securing an important share of Asiatic commerce to our State, we have special reason for gratulation.

I transmit a copy of the certificate of the Secretary of the Interior, apportioning the representation from the thirty-eighth Congress among the several States, in accordance with the provisions of the act of Congress, approved May 23d, 1850. From this it appears that the State of New York is entitled to thirty-one members in the House of Representatives. It becomes your duty to district the State in conformity with this certificate.[14]

By the act of Congress of August fifth, 1861, a direct tax of twenty million dollars is laid upon the United States, and apportioned to the States respectively. The proportion of this State is two million six hundred and three thousand nine hundred and eighteen dollars and sixty-six cents. This tax is laid on real estate only. Property belonging to any individual who actually resides thereon, to the value of five

[14] By chapter 454, passed April 23, the State was divided into thirty-one congressional districts.

hundred dollars, is exempt. The details of the act are quite complex so far as relates to the collection of taxes under it. But it contains a provision that any State may "assume, assess, collect and pay into the treasury of the United States, the direct tax, or its quota thereof, in its own way and manner, by and through its own officers, using a valuation list, made by State authority, and any State giving notice to the Secretary of the Treasury, previous to the second Tuesday of February, shall be entitled, in lieu of all expenses, to a deduction of fifteen per cent. on such portions as have actually been paid into the treasury of the United States on or before the last day of June, and ten per cent. on such parts as shall have actually been paid on or before the last day of September." No assessors or collectors are to be appointed after a State gives notice, and the "quota or direct tax is liable to be paid or satisfied, in whole or in part, by the release of such State advances, duly executed to the United States, of any liquidated and determined claim of such State of equal amount against the United States." I have no hesitation in recommending that the tax be assumed by the State at once; and I submit for your consideration the following mode of liquidating it:

The Act of Congress of July twenty-seventh, 1861, provides for indemnifying the States for advances to the General Government, and covers all the expenditures incurred in raising volunteers, under the act of the Legislature of this State, of April 16th.

On the first instant, these amounted in the aggregate to	$2,873,501.16
On this, the late Comptroller received from the United States Treasury	1,156,048.50
Leaving still due from the government, on advances, the sum of	$1,717,452.66

This balance, it is assumed, will be allowed at the Treasury Department, and will be credited on account of the direct tax due from this State, which, as before stated, is	$2,603,918
Deduct the 15 per cent	390,586
Leaving a net tax of	$2,213,332
Deduct above balance due on advances of State	1,717,452
And there is found to be due the United States Treasury	$495,880

Under chapter 277, laws of 1861, a direct tax of one and a half mills on the taxable property of the State was levied. This will produce about two million one hundred and forty-one thousand dollars, of which but about five hundred thousand dollars, as appears above, will be required to liquidate the balance of the United States tax. It is to be remembered that this State tax was levied upon personal as well as real property, and that there were no exemptions, such as are provided for in the law of Congress. But, with the privilege of adjusting the debt due to the State for advances, the opportunity for making an important saving on the collection of the federal tax, providing at the same time for paying a demand which must be met, the Legislature, I think, will find no difficulty in making such disposition of a part of the proceeds of the tax raised under chapter 277, as will accomplish these ends.[15]

[15] The Legislature adopted a concurrent resolution in January, authorizing the Governor to notify the Secretary of the Treasury that New York would pay its share of the direct tax on or before the last day of June, 1862.

Chapter 192, passed April 12, appropriated $2,603,918.67 for the payment of New York's share of the direct tax for the current year. The Comptroller was directed to apply for the payment of the tax the indebtedness of the United States to this State.

The Act also provides for collecting upon the annual income of every person residing in the United States, whether derived from property or from any profession or vocation, carried on in the United States or elsewhere, if such annual income exceeds eight hundred dollars, a tax of three per centum on the amount of such excess of income above eight hundred dollars, and upon the income, accruing upon any property or securities owned in the United States by any citizen thereof, residing abroad, a tax of five per centum. A favorable exception in both instances is made on income from treasury notes and other securities of the government. These taxes are to be assessed and collected under regulations prescribed by the Secretary of the Treasury.

This is a novelty in our country. We have heretofore taxed only real and personal property. It is obvious that great inequality would result from an enforcement of this law, in a manner so partial as would be the case now. It is understood that Congress will take measures for modifying its provisions. A question as to the constitutionality of this measure has been raised. It is asked if it does not conflict with the terms of section two, article one, United States Constitution, which determines that "representation and taxation shall be apportioned among the several States according to their respective numbers."

In my annual message of 1861, I recommended that the military spirit of the State, which for several years has been gradually declining, should be fostered, and called attention to the fact that it was a part of the established policy of our country to maintain a well regulated militia as a pledge of domestic security, and of safety from external violence. It was obvious that our militia was in no condition, either as respected discipline or equipment, for

Chapter 456, passed April 23, imposed a tax of two mills on the dollar for the purpose of raising funds with which to meet the claim of the federal government.

minute duty. The growing apprehension throughout the country that a collision might occur between the authorities and the insurgents, and especially in view of the fact that our arsenals and armories were lamentably destitute of supplies, induced me on the ninth of January, in transmitting the annual report of the Commissary General, to call special attention to the facts presented therein. Among other things it was shown that the great body of the organized militia of the State was unsupplied with reliable arms. I specially referred to the then existing deficiency in the military stores, which I recommended the Legislature to take early measures to supply, urging that in order to be prepared for any emergency, a suitable appropriation should be made from the Treasury and placed at the discretion of the military department. The favorable terms and the large market at that time, would have enabled the State to procure the necessary articles at very moderate prices when compared with subsequent ones. The final consideration of this subject, as is known, did not take place in the Assembly, until the 12th day of April, when a bill passed appropriating five hundred thousand dollars, for the purpose of arming the militia of the State, and providing for the public defence. There have been purchased in Europe, under this Act, ten thousand Enfield rifled muskets, of which number about six thousand have been delivered in New York. The Report of the Commissary General will embrace a full detail of the receipts and issues of military stores and the present supply of arms and munitions.

Our constitution requires that the militia of this State shall at all times be armed and disciplined, and in readiness for service.[c] To accomplish this, some essential modifications of our present militia laws are obviously necessary. As Congress has the power to provide for organiz-

[c] Const. 1846, art. 11, § 1.

ing, arming and disciplining the militia of the country,[d] the system of this State must have for its foundation the various acts of that body. The defective character of the act of Congress of 1792, presents a serious difficulty, in the way of such modifications of our present laws, as experience would dictate. A carefully prepared report, the result of a systematic inquiry and correspondence, with the active military men of the State, made through the Adjutant General, by the Judge Advocate General, will be presented to you. It proposes to retain the main features of the present militia system, to abolish, with two exceptions, the elective system; to return to the mode of enrolling prescribed by the act of 1792, to require yearly drills, and thus provide a well-trained nucleus in every locality; to limit the duration of commissions and to terminate, within a given period, those now in force; to require candidates for commissions to be examined, and the enactment of a series of articles of war, for the government of troops in the service of the State in time of war, based on those in force in the Army. It recommends other and minor amendments. In modifying our system, it is important to keep in view two facts: the one, that too much is not attempted to be accomplished; the other, that suitable provision shall be made for the necessary expenses of the men. The act of 1792 erred, undoubtedly, in requiring more than it should of a people whose pursuits are largely agricultural and mechanical. Experience shows that those between the ages of twenty and thirty constitute the class, who maintain the militia organizations, and from which has been drawn the great bulk of the volunteers. Upon this class we must principally depend for the efficiency of our future militia establishment. There is an obvious necessity for immediate attention to this subject, and I therefore recommend the early preparation of a bill, which,

[d] U. S. Const. art. 1, § 8, clause 16.

while conforming to the laws of Congress, shall meet our present and future needs.[16]

Our political troubles, which have so engrossed the attention and employed the resources of the country since the close of the last session, are the fruits of a tree whose seeds were sown a third of a century ago, and, though unobserved by us, its growth has been carefully watched by those whose nurturing hands have given direction to its roots. The attempt to ignore the Federal power in 1832 was an expression of the same sentiment which now animates the leaders of secession; and time has served to justify the prediction of President Jackson, that, though crushed, the spirit of nullification would revive again under the form of slavery agitation. Slowly, but surely, the process of poisoning the Southern mind has been going forward. History, in its own time, will sit in judgment and review the account; to its record I leave the rise and progress of secession. To those events only which directly involve our duty, shall I refer.

The summer of 1860, was one of peculiar political interest. The manifestations of popular opinion were unusually open and candid. Early in the year political conventions had placed four candidates before the people for the Presidency. Three of these stood unequivocally pledged to uphold the Constitution and maintain the Union. The fourth, while believed by his Northern supporters to be loyal, was, by the more general opinion, regarded as otherwise. Recent events have fully justified the popular suspicion in this respect. The election was on November 6th. The North proceeded calmly and deliberately to the

[16] Chapter 477, passed April 23, was a general act "to provide for the enrollment of the militia, the organization and discipline of the national guard of the State of New York and for the public defence." Among other things, the statute, section 284, ratified all the acts, proclamations and orders of the Governor since the 16th day of April, 1861, relating to the calling out of the militia or volunteers.

exercise of a right which had been settled at the Revolution and confirmed at every subsequent quadrennial election. The vote was unusually large. The verdict at the polls was emphatic. Of the four million six hundred and fifty-four thousand ballots given, three million eight hundred and fifteen thousand were for unconditional Union. New York, with sixteen others of the thirty-three States, gave her electoral vote for the present incumbent. Aside from the legal obligation, the South, by participating, were bound in honor to accept the result of the election without dissent; but the leaders of disunion, with amazing audacity, made it a pretext for precipitating the catastrophe of attempted secession upon the country. They well knew that the rights of no State had been endangered by the result of the election. Indeed, the successful party had, in all authoritative modes, expressly contended for the right of each State to control its own domestic institutions. More than this, the opposition held a majority in both branches of the National Legislature, and the judiciary, by the Constitution, were a co-ordinate branch of the government and therefore independent of the new administration; besides, the three powers of the government had been at no period in our history, and, from the nature of things, could never all be held at the same time by either section. The issue of the election gave satisfaction in the city of Charleston, and the result was scarcely made known before the plotters boldly announced their determination to destroy the Union. The leaders would not wait. They dared not. They drove the public assemblies with impetuous haste toward the brink of rebellion. The alleged grievances were but vague generalities. They insulted the national flag at every opportunity; denounced the national government; seized by force and fraud the public property; and repudiated obligations due in loyal States. A firm and clear-sighted Federal Executive would have summarily meted out the penalties of the law to the fomenters of conspiracy

and treason. But age and ill-placed confidence had rendered the President* timid, and made him blind to obvious facts. Certain members of his Cabinet openly abetted the rebellion, or were guilty of wanton treachery. They used their high positions to strengthen the conspirators and to cripple the army and navy. They had controlled the appointment of diplomatic representatives, placing in important positions those known by them to be inimical to the Government, and secret agents were employed, with their approval, to visit Europe, to influence the governing classes there. A legion of evil agencies, some secret, others open, were put to work to demoralize and denationalize the South, a labor rendered practicable by the peculiar character of Southern society. Spurred on by envy and ambition, the leaders toiled like giants. Specious appeals were made to unworthy prejudices. The rankest hostility to Southern interests was imputed to the North. Congress was charged with destroying the commercial equality of the South, and hopes the most extravagant were encouraged. Legislative bodies and conventions of the people were suddenly changed from the object of their convocation; power the most arbitrary was usurped; in a word, the leaders halted at no barrier, and were deterred from no deception, to carry into execution their long concerted scheme of disrupting the Union. A State which had once defied the law, a State which had borne few of the burdens, had had a large hand in shaping the national policy, which had brought weakness rather than strength, and had enjoyed all the benefits of the Union, was appropriately chosen to lead the way.† On the 29th of December, her Legislature passed a formal act of secession. Next followed, in January, Mississippi, Alabama, Florida, Georgia and Louisiana; Texas in February, Virginia in April, and Arkansas, Tennessee and North Carolina in May, making

* James Buchanan.

† South Carolina.

eleven States in all, and seven before the incoming of the new administration. The people of New York, strong in their loyalty and devotion, could not believe that, toward a Government so mild and beneficent as ours, the citizens of any State could seriously entertain a disloyal feeling. They thought that when the ebullitions incident to a general election had subsided, the good sense of the people would restore harmony. They knew, as all know, that for eighty years the Government had been true to its constitutional obligations, that the immunities of each State had been sacredly observed, and that all alike had enjoyed the unequaled blessings of a truly republican form of government. But the daily proceedings in the rebellious States were such as to create astonishment and to weaken the faith of the most hopeful. Even the President became alarmed at last. On the eighth of January, 1861, in a special message to Congress, in which was exhibited unwonted firmness, he said the Nation was in the midst of a fearful revolution, and reasserted the noble sentiment of the beloved hero who terminated a war, and distinguished the day in our annals, that "the Union must and shall be preserved." He declared his purpose to use the military power against all who resisted the Federal authorities. The Legislature of this State, in a series of resolves, with but three dissenting voices, "hailed with joy the firm, dignified and patriotic special message of the President," and tendered to him whatever aid in men and money he might require, to enforce the laws and uphold the authority of the Federal Government. Copies of these were sent, through me, to the President and to the Governors of all the States.

On the twenty-fourth of January, I received and transmitted to the Legislature, the resolutions adopted four days previously by the General Assembly of Virginia, inviting such States as would "unite with her in an earnest effort to adjust the unhappy controversies, in the spirit in

which the Constitution was originally formed and consistently with its principles, so as to afford adequate guaranties to the Slave States for the security of their rights, to appoint commissioners to meet hers, on the fourth of the following month, in Washington, to consider and agree, if practicable, upon some suitable adjustment." Although but eleven days intervened — a period scarcely sufficient even to inform many of the Legislatures in session, and too brief to convene those not in session — I nevertheless, did not feel willing to let this or any opportunity offering a reasonable hope of success, pass without a trial. I accordingly recommended the appointment of five citizens of this State, in whose character and patriotism the public would have full confidence, to meet those from Virginia and other States. On February first, the Legislature selected Commissioners. Their reports will be found in the Senate documents of 1861, numbers fifty-nine and sixty.

On the 21st of March, I received, from the President an authenticated copy of the joint resolutions adopted by Congress proposing an amendment to the Constitution of the United States, which, when ratified by three-fourths of the State Legislatures, should become a part of that instrument, in the following language: "No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service, by the laws of said State." Nothing more than the adoption of this amendment could, in justice, have been asked by the South. It should be remembered that this action was taken after the withdrawal of the representatives of States in rebellion, and this fact alone should have more weight in determining the question of security to Southern rights, and the friendly spirit of the North, than all the assertion and calumny that could be uttered. I transmitted a copy of

this to both houses, recommending its adoption. The proposed amendment was not passed upon by them, however.

Events rapidly culminated. The newly organized Confederate administration lost no opportunity to add to the excitement, and to urge on the rebellion. The leaders determined that a "blow must be struck," that "blood must be shed," before their government could have a defined existence. Charleston harbor appeared to be the point selected for this bloody inauguration. The masterly occupation of Fort Sumter by Major Anderson, the prolonged preparations of the insurgents for reducing it, and the firing upon the supply ship Star of the West, had fixed the eyes of the country upon that point. The peculiar difficulties of affording supplies by a Government vessel, and the meagre amount of subsistence in store, induced the commanding officer to inform the Governor of South Carolina that unless he received a supply in two days, he must surrender the fort. As this was obviously impossible, the evacuation by the Federal forces was inevitable. But it did not suit the designs of the rebels to receive the fort without a resort to violence. Without provocation, a cannonade from eleven batteries and a land and water force of more than eight thousand men, opened upon the devoted little band. It was physically impossible for seventy men to hold out against such odds, and the Federal force, under the guns of the rebels, capitulated on the 13th of April. On the same evening, the news flashed over the vast telegraphic net work of the country. Northern blood was stirred. This gratuitous violence and this deliberate insult to the flag, conclusively proved to all that it was the design of the leaders to break up the Government. An immediate reaction took place in the popular mind, completely uniting the people of the loyal States. They deliberately determined to put down the rebellion, and this purpose has been strengthened by time and reflection. The President immediately appointed a special session of

Congress to meet on July the fourth. He also issued his proclamation, calling for seventy-five thousand three months militia. Of this force the quota of New York was thirteen thousand men. On the morning of the fifteenth, I communicated this fact to the Assembly, and recommended that a military force sufficiently large to meet the present and prospective demands of the Government, be authorized, and that greater discretionary power be conferred to embody and equip a volunteer militia for the public defence and to provide the necessary means therefor. A bill for this object, in a few hours, passed through all the forms of law, with but six dissenting voices. In the Senate, its passage was equally prompt and decisive. It empowered the Governor, Lieutenant-Governor, Secretary of State, Comptroller, State Engineer and Surveyor and State Treasurer, to accept into the service of the State, in addition to and as a part of its militia, for two years, thirty thousand volunteers. The officers named in the Act immediately met and resolved to raise seventeen regiments of seven hundred and eighty men each. A proclamation was issued by me, calling for this force to serve as Infantry or Riflemen, and to rendezvous at New York, Albany and Elmira. As the Board of officers formed under the Act will make a report, accompanied by the minutes of its proceedings, it will be sufficient for me to say that the spirit aroused by the insult to the flag in Charleston harbor sent a company from every neighborhood, and at the end of a fortnight, and just when the spirit of volunteering was rising, the first quota was filled. Through the efforts of a member of the Board, who visited Washington for that purpose, the Government consented to accept the twenty-one regiments still remaining of the force authorized by the Act referred to. On the 16th of April I ordered the Seventh Militia regiment to Washington, and the unprotected condition of that city determined me to dispatch thither at once all the remaining militia strength immedi-

ately available. Marching orders were therefore issued to the Sixth, Twelfth and Seventy-first on the 17th, to the Twenty-Fifth on the 19th, and to the Eighth, Thirteenth, Twenty-Eighth and Sixty-Ninth Militia, and the Eleventh volunteers on the 20th. It will be remembered that traveling was obstructed on the 20th by the burning of the railroad bridges between Philadelphia and Baltimore. To what extent this fact interfered with the trains, could not be ascertained, as telegraphic communication was cut off almost immediately. I therefore directed the regiments to leave by steamers, by way of the Potomac. The Eleventh volunteers was the only organization raised under the act of April 16th, in any degree ready for service; even that was as yet unorganized, and the election of officers was held on shipboard. It is not improper to say that to the timely arrival of the militia from this State, must, in a great degree, be ascribed the safety of the Capital and the restoration of security in Washington.

While enlistments were proceeding at a rate altogether unprecedented, the Military Board was employing their energies to supply the necessary clothing and to provide arms. The mercantile class were unprepared for meeting the immediate demands for articles incident to a state of war. So limited was the stock of army cloth in our principal markets, that before any large number of uniforms could be furnished, the wool had to be purchased and the fabric prepared. Through an unfortunate modification of a contract with a respectable firm in the city of New York, for twelve thousand uniforms, a considerable number of suits of very poor quality were delivered to the agents of the State, and before becoming apprised of their inferiority, they were distributed to the troops. The facts respecting this and the terms of settlement with the contractors, will fully appear in the report to which I have referred. It may be proper to add that this circumstance

occasioned the greatest vigilance in contracting for and inspecting subsequent supplies of all kinds for our troops.

On the twenty-fourth of April an agent of the State was dispatched to Europe with a letter of credit for five hundred thousand dollars, and authority to purchase twenty-five thousand stand of arms. On this he obtained and shipped nineteen thousand Enfield muskets, which were delivered in New York at a cost of about three hundred and thirty-five thousand dollars.

By the twenty-fifth of May, the thirty thousand volunteers, authorized by the act, had been raised, accepted by the Board into the service of the State, and organized into thirty-eight regiments. On the eleventh of June, the respective regimental Field Officers had been elected, and their services accepted, and on the twelfth of July, the last of the thirty-eight regiments had left the State. Thus, in a period of eighty-seven days, a volunteer force of thirty thousand men had been drawn from various parts of the State, organized, fitted for service and dispatched to the seat of war.

There were accepted under authority from the President to a committee of citizens of New York, four Volunteer and four Militia regiments, and according to the best information I have been able to obtain, there were also two other organizations accepted by the War Department, independently of the State authorities, previous to the first of July. By the middle of that month, there were in the service of the Government from this State, of three months militia, about eight thousand three hundred men; of three years militia, about three thousand four hundred; of two years volunteers, thirty thousand; and of three years volunteers, accepted directly by the War Department, and through the committee of citizens of New York, about five thousand, making an aggregate force of forty-six thousand.

Immediately after the engagement at Bull Run, the President communicated to me his desire that New York

should furnish an additional force of twenty-five thousand three year volunteers. I promptly informed him of my readiness to aid the Government to any extent it might require, but stated that the power conferred by the Legislature of New York to raise troops for the war was already exhausted, hence it would be necessary for me to convene the Legislature unless the Government would furnish the money necessary for raising, subsisting and equipping this further quota. The latter course met the President's approval. Proper authority was duly granted by the War Department for this purpose, and directions were given to the agents of the Government at Washington, and on service in this State, to aid me in this work. I therefore, on the 25th of July, issued my proclamation, calling for a volunteer force of twenty-five thousand men, to serve for three years or during the war, to rendezvous, as under the first call, at New York, Albany and Elmira. In framing a general order regulating the acceptance of the officers and men, I deemed the good of the service required that all candidates for commissions should pass an examination as to their fitness for field and company officers. The effect of this was, in a partial degree, to retard enlistments, but to give a greatly improved class of officers to the service. At this time, while there was nothing in the aspect of affairs connected with raising men particularly discouraging, yet, owing to several causes, enlistments were less active than they had been. With a view to stimulate volunteering, and at the same time to obtain the best class of troops, I directed the Adjutant General to authorize branch depots in twenty-two different localities, so separated that they would be unlikely to interfere with each other. The objects were more than accomplished. Not only did the change secure a class of troops which for respectability and intelligence can nowhere be surpassed, but it hastened enlistments. Ten regiments have already been raised at these

special camps and a sufficient number of men in addition to these to form eight more.

On October first the Government authorized an increase of the force from this State to one hundred thousand men. Again, on the sixth of November, this number was enlarged to one hundred and twenty-five thousand.

The Annual report of the Adjutant General will show that New York has sent into the field, of infantry and riflemen, ninety-nine regiments, of which number, eleven were three months militia; of cavalry, ten regiments and one battalion; of artillery, two regiments, two battalions, and nine batteries; a rocket battalion, and a regiment of engineer officers and soldiers; or an organized force equivalent to one hundred and fifteen regiments. In addition to this, there are now in the State, of volunteers mustered into the service of the United States, about fourteen thousand five hundred, or sufficient for fifteen regiments more, increasing New York's contribution to one hundred and thirty regiments.

Muster-in rolls and statistics as to numbers are as yet incomplete, but the accurate returns are not likely to materially vary the following figures relating to the above organizations, namely:

There have left the State in the several regiments, of officers and men	95,078
Recruits since added	11,000
Total that have entered service beyond limits of State	106,078
Now in the State, mustered into the U. S. service	14,500
Aggregate number of men raised in State	120,578

Of those who entered the field there have been:

Killed in battle	270
Have died from natural causes	350

Made prisoners of war	550
Honorably discharged	2,700
Discharged by error in U. S. muster	1,500
Discharged by court martial	140
Absent without leave and desertions	3,300
Unaccounted for	900
Discharged by expiration of term of service (3 months militia)	7,334
Now in the field	89,034

If there be added to the latter the volunteers now in the State, an available force of 103,307 is shown.

It is estimated that, in addition to the foregoing aggregate, at least twenty-five hundred men have been drawn from this State and mustered into organizations, not enumerated above.

This force is scattered over nine States, in forty-three different brigades, and under twelve Generals of division. I will not attempt to heighten the importance of the foregoing exhibit by comments. The figures are more emphatic than words.

The New York troops have taken part in every engagement during the war, east of the Alleghanies and south of Washington. They have enriched the soil of six States with their loyal blood. Their bearing has at all times been that of freemen contending for fireside rights. They have never forgotten the dignity and humanity of the citizen and neighbor in the uniform of the soldier. Courage, coolness, and the endurance of veterans, have characterized them in the hour of danger. Of the first to obey the forward call, one of her young commanders was among the earliest to inscribe his name on the bright page of hero martyrs. Others, of beloved memory, have fallen; some in battle, others by disease; and not a breeze from the South but bears upon it the manly sighs of others, those who, because they loved and would defend their country's rights, fill the

felon's cell. When the enduring record shall be made up, in all that constitutes the brave soldier, the war for the Union will suffer nothing when compared with the grand struggle which gave us a national existence.

On the 28th of September, the President tendered me the appointment of Major General of Volunteers, under the act of Congress of July 25th, 1861, and subsequently created the State of New York into a Military Department, under my command. Finding after a careful examination that there were no constitutional objections to my holding the office, and in view of its practical advantages to the service, I accepted it, although, of course, not intending to receive any of its emoluments.

This summary of facts, connected with meeting the requisitions of the General Government, is respectfully submitted for your information. The Military Board, the Comptroller, and the chiefs of the several staff departments, will present all necessary details. The Legislature will, I am sure, approve the efforts that have been made to meet the demands of the government. The exigency has been great, and the means of providing for it and of meeting in all respects the desires of the public, have at times been beyond the ability of those charged with the duties. If a feeling of impatience has been manifested in consequence, while its influence has been somewhat disheartening upon the public servants, it was but an indication of the deep determination of the people to crush a rebellion, which in all future time will be adjudged the most causeless and most wicked that history records.

Under authority granted from the War Department, contracts have been made by me for large supplies of uniforms, under-clothing, shoes, ordnance stores, equipments, rations, and other necessary supplies, for and on account of the United States, and free from any pecuniary liability, except on account of the General Government. I submit a form of the contract, of which several hundred have been

executed by me. The uniforms with which our troops are supplied, being more satisfactory to them, and, in certain details, more appropriate than those furnished from the Government store house, I have had the privilege, under authority from the United States, to furnish additional supplies, from time to time, to our troops in the field, so far as practicable, and am glad to say this is a cause of mutual satisfaction to our troops and to the War Department.

Since the last of August, the State has had an agent of much military experience located in the office of the Commissary of Clothing at Washington, through whom our troops were supplied with clothing, and to whom applications for supplies of various kinds could be made. Since the middle of November, the Inspector General of the State has been stationed in that city. His experience in the field, his familiar acquaintance with army officers, and his position on the staff of the Commanding General, have given him peculiar facilities for visiting the camps and inspecting the condition of our regiments and knowing their wants.

It is known to you that the first thirty-eight volunteer regiments were fitted out by the State. Such also was the case with the three months militia. For the remainder of the force, the General Government has furnished, and is to furnish, all the means; and supplies have therefore been in accordance with the general regulations of the Army.

I recommend that an appropriation at once be made for supplying certain articles of comfort rendered very desirable, if not necessary, by the advanced season, which are not provided for by the army regulations, and which, while adding to the comfort of the soldier, will promote the efficiency of the service.

It was not till September that the War Department by a general order gave effect to the Act of Congress of July last, with reference to the allotment by volunteers of portions of their pay for the benefit of their families. Finding

that the system was not so generally adopted as it deserved to be, I requested one of the Commissioners to examine the accounts of the Treasurer, &c., to visit the regiments in the field for the purpose of bringing the system to their attention and procuring its adoption to as large an extent as possible. He was directed to state to the volunteers that application would be made to the Legislature to authorize the employment of the Treasury of the State as the depository of the funds so allotted. Before he had completed his labors, Congress, by a new act, placed the matter in the hands of Commissioners appointed by the President, who are to serve without compensation. It is, however, desirable that the Treasurer of the State should be promptly authorized to receive and disburse any portion of their pay that the volunteers may desire. Connected with this, I recommend the adoption of an equitable system of relief to the families of volunteers.[17]

Since the opening of the rebellion I have devoted myself wholly to the duty in hand, and have earnestly endeavored to preserve the high rank of this State in all matters, and while first regarding the comfort, health and efficiency of the soldier, I have not lost sight of the expenditures involved.

No requisition has been made by the government that remains unhonored. Among the very first to respond to the call for the defence of the Capital in April, New York has not only steadily answered every demand since made, but has time after time besought the privilege of adding to her force in the field. Unless the State shall exhibit an un-

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17 By chapter 21, passed March 6, providing for the distribution of the soldiers' allotments, the state treasurer was authorized to receive from United States authorities funds assigned by volunteers for the benefit of their families, and the act provided for the distribution of these funds through the medium of the county treasurers.

The Legislature at this session passed several local acts for the relief of volunteers, and to enable localities to make provision for the enlistment and compensation of troops.

willingness to respond to the wishes of the General Government, its constituted authorities would seem to be the proper medium through whom alone company and regimental organizations should be accepted.

On the 19th of October, I received a communication from the Department of State, inviting my consideration of the subject of the improvement and perfection of the harbor defences of the sea and lake coasts of this State, and requesting me to submit the matter to the consideration of the Legislature. Reference was made to the fact, that disloyal persons had hastened to foreign countries even before the present insurrection had revealed itself in arms, to invoke their intervention for the overthrow of the Government and the destruction of the Federal Union, and although unsuccessful in their first efforts, it was believed that those agents were still industriously endeavoring to accomplish their purposes by degrees and by indirection, and were seeking to involve our country in controversies with States, with which every interest requires that it shall remain in relations of peace and friendship.

A personal examination, in company with several competent engineers, led me to call the attention of the Legislature of 1860 to the fact, that the approaches to the city of New York by water were not adequately defended, and the opportunities incidentally afforded me during the past year, fully satisfied me of the insufficiency of our lake defences. I therefore immediately assured the Secretary of State that I would aid the Government in providing for the proper protection of our frontiers and harbor approaches in anticipation of the action of the Legislature. I submit herewith a copy of the correspondence. A preliminary report of the Engineer-in-Chief, relating thereto, will be at once transmitted. The subject is one which calls for prompt and effective measures on the part of the Legislature, and I assure you of my cordial co-operation in any plan which will afford entire security to the persons and

property of our citizens. I recommend that immediate measures be taken for obtaining from Congress an appropriation sufficient to provide suitable defences at all exposed points; and so that no time shall be lost, I recommend that authority be given to proceed with the work of preliminary survey and to take the proper antecedent steps. In default of the prompt action of the United States authorities, it is manifestly our duty to proceed at once with such portions of the defence as prudence requires, looking to the Government for ultimate reimbursement.

A recent occurrence, which created great solicitude both here and in Europe, and which it was believed by many would lead to hostilities between this country and England, renders it not improper for me to say that no State in the Union has so large an interest as New York in preserving amicable relations, especially with commercial powers. The tonnage and value of vessels owned in the port of New York alone, in 1860, was:

	Tonnage.	Value.
Of sailing vessels	1,258,491	$69,217,005.00
Of steam vessels	205,510	26,716,300.00
Total	1,464,001	$95,933,305.00

The annual average of foreign exports from this State is one hundred and eleven million dollars, and the annual average imports from foreign countries into the State are one hundred and ninety-one million five hundred thousand dollars. The aggregate imports and exports of the port of New York for the year 1860 were three hundred and eighty-four million dollars, or a daily average of foreign commerce exceeding one million of dollars in value passing through the Narrows of New York harbor. The business of the ports would be shown more fully by adding to the above the coasting trade, amounting to double, if not to quadruple, these figures, but there is no official data by

which this can be shown. Hostilities with either of the great powers of Europe, and most of all with that government which, from consanguinity, language and customs, is most intimately related to us, would be of untold disaster. No mere pretext, no caprice of court or cabinet, no cause whatever, unless it involve national dignity or we are denied a positive right, could justify the representatives of this State in consenting to a war with foreign powers, especially at a period when extraordinary supplies of men and money have been, and will continue to be, drawn from us, to overwhelm the insurgents at home. We are now engaged in fighting the battle of constitutional freedom, resolved to restore the rightful authority of the Union throughout its whole extent. We are strong, because we are right. We should not weaken ourselves by taking upon us a war of questionable necessity. Our rank upon the waters, and in the family of nations, has been obtained through no aid from others. It must be maintained, as must be all our interests, by ourselves. Our career is just opening, if we preserve our self-respect and the respect of other nations. Let us give no intended offence, and tamely submit to none. We have confidence in the wisdom of the government, and believe that present and prospective questions affecting this country's relations with foreign powers will receive that consideration which their weighty consequences entitle them to, and that the decisions will be founded on principles of law. Their decisions are ours; and in a just cause New York casts everything into the balance. Above and beyond all questions of property, all questions of present ease and present peace, the man of truly American heart rises to maintain the honor of his flag, and to preserve the dignity and stability of his government.

EDWIN D. MORGAN.

Albany, January 7, 1862.

SPECIAL MESSAGES.

January 8. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 8, 1862.

"I transmit the report of the Judge-Advocate General upon legislation deemed necessary to promote the efficiency of the State militia. I referred in my annual message to several points presented in this document.

The experience of the past year has shown our present system to be imperfect, and we are admonished to take the earliest steps for rendering our citizen soldiery an efficient body, duly prepared to meet any exigency which the condition of the country may force upon us. [See note 16.]

E. D. MORGAN."

[For report see Assembly Document No. 10.]

January 8. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 8, 1862.

"Herewith I submit the Annual Report of the Judge Advocate General, and I particularly ask your attention to that portion of it relating to the necessity of a series of Articles of War, for the government of our troops in the service of the State, in time of War.

E. D. MORGAN."

[For report see Assembly Document No. 11.]

January 8. To the Assembly:

"Herewith I transmit the Report of the Surgeon General, presenting a general account, with valuable statistical

details, of the Department under his charge since the middle of April last. It will be found to possess much more than a professional interest.

E. D. MORGAN."

[For report see Assembly Document No. 12.]

January 8. To the Assembly: Transmitting the annual report of the Inspector General.

January 8. To the Assembly: Transmitting the annual report of the Metropolitan Police.

January 9. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 9, 1862.

"I transmit the Report of the Board of Officers named in the act of April 16th, 1861, entitled, 'An act to authorize the embodying and equipment of a Volunteer Militia, and to provide for the public defence,' together with a copy of the minutes of their several meetings.

E. D. MORGAN."

[For report see Assembly Document No. 15 and Senate Document No. 29.]

January 15. To the Assembly: Transmitting the annual report of the Adjutant General.

January 15. To the Assembly:

ALBANY, *Jan.* 15, 1862.

"In conformity with section 4 of the act of April 17, 1861, entitled 'An act to provide arms and equipments for the militia of the State, and for the public defence,' I submit the following report:

The act referred to appropriates the sum of five hundred thousand dollars to be expended under the direction of the Commander-in-Chief, Lieutenant-Governor, Secre-

tary of State, Attorney General and Comptroller in such manner as they shall deem most appropriate for the purpose of efficiently arming the militia of the State, and providing for the public defence.

On the twentieth of August, a contract was made with the firm of Schuyler, Hartley & Graham, of the city of New York, to purchase, through a member of their firm, then in Europe, ten thousand stand of arms of the style known as the Enfield rifled musket, with bayonet attached, of the most approved modern pattern obtainable. For details of this agreement, I refer you to the contract, a copy of which accompanies this report. Under this, there have been delivered in New York, six thousand and eighty stand of arms, at a cost of about seventeen dollars and fifty cents each.

The temporary embargo placed upon the exportation of arms has delayed the balance; but the agent expects to resume the shipment again at the first opportunity. It is presumed that the expenditure under this contract will not exceed one hundred and eighty thousand dollars.

Under authority of the officers named in chapter 292, I ordered, in November last, one hundred thousand pounds of the most approved quality of cannon powder, subject to inspection before acceptance, and to be delivered free of charge, in or near the city of New York, as directed by the Commissary General, at the rate of eighteen cents per pound. This quantity is now ready for inspection and delivery.

There has also been expended, under authority of the Board, for material for the defence of the harbor of New York, the sum of seventy-nine thousand two hundred and twenty-nine dollars. This property has not as yet been used, but it is so situated as to be immediately available, if required, for obstructing the entrance of the harbor at the Narrows. The report of the Engineer-in-Chief will refer more fully to this subject.

I recapitulate the expenditure authorized under chapter 292, as follows:

For 10,000 Enfield arms, not exceeding.....	$180,000.00
For 100,000 pounds cannon powder, at 18 cents	18,000.00
For material for obstruction of Narrows of N. Y. harbor	79,229.00
Total	$277,229.00

It is well known that arms could not be supplied in April last from stock then in this country, and so limited was found to be our capacity for manufacturing them that we were obliged to depend principally upon Europe for supplies of this article. The increased capacity of the National armory at Springfield, and the encouragement to private manufactories, has, in a measure, obviated the necessity for importing arms.

The Act of April 17, to which special reference is made in this report, did not provide for reimbursing the treasury for moneys drawn therefrom under its authority. But the act of April 16, while appropriating three million dollars for raising volunteers and providing for the public defence, authorized the levying a direct tax for the repayment of the necessary advances. As it was expected the United States would reimburse the State for payments made under this Act, and as the arms were specially needed for the volunteers ordered to the seat of war, it was deemed advisable that the Military Board, and not the Board under the Act of April 17, should purchase the first supply of arms. They accordingly ' on the 24th of April, dispatched an agent of the State to Europe, with a letter of credit for five hundred thousand dollars, and authority to purchase twenty-five thousand stand of arms. On this he obtained and shipped nineteen thousand Enfield muskets, which were delivered in New York, at a cost of about three hundred and thirty-five thousand dollars.'

In November, the Secretary of War requested that State agencies abroad, for the purchase of arms, should be withdrawn, in order that the United States might make all the purchases of arms with the greatest economy. He stated that the competition between the agents of States and the General Government, induced a spirit of speculation, which would be obviated by the course suggested; and concluded by saying that the arms procured by the Government, would be distributed to the troops of the several States as soon as received. As a compliance with this request was necessary no further authority for foreign purchases has been authorized.

Respectfully submitted,

E. D. MORGAN."

January 22. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 21, 1862.

"I transmit herewith the report of the Engineer-in-Chief of this State, to which reference was made in my annual message. I have already called attention in general terms, to the several important subjects which this document more specifically discusses, and I doubt not it will receive your most careful attention.

E. D. MORGAN."

[For report see Assembly Document No. 27.]

January 25. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 25, 1862.

"I received from your honorable body a resolution, of which the following is a copy:

'*Resolved,* That His Excellency the Governor be requested to inform the Assembly whether the volunteers, enlisted pursuant to the act of April 16th, 1861, and subsequently honorably discharged on inspection, have been

paid for the time they were in the service; and if not, whether any legislation is necessary to enable them to be paid.'

In answer to the first inquiry I have to state, that the volunteers to whom reference is made, to wit, those who on the usual medical examination at the several rendezvous in this State were found to be physically disqualified, as appears by the record of the Paymaster General, have not been paid for the time preceding such examination and discharge. Payment has been made only to those who, after due examination, were passed by the medical officer, formally accepted by the Military Board, and mustered into the service of the State.

The second inquiry, 'whether any legislation is necessary to enable them to be paid,' has been referred to the Judge Advocate General. I will communicate his answer as soon as it is received.

It is proper to add that by an arrangement with the principal railroad companies, volunteers who failed to pass the medical examination were returned free over the roads, on producing proper certificates of rejection. They were transported to the general rendezvous and there subsisted at the public expense previous to the examination.

E. D. MORGAN."

January 31. To the Legislature: Transmitting the annual report of the receipts and expenditures of the Cooper Union for the advancement of science and art.

January 31. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 30, 1862.

"I received this morning a copy of the following resolution adopted yesterday by your honorable body:

'*Resolved,* That his Excellency, the Commander-in-Chief, be and is hereby respectfully requested, at his earliest con-

venience, to report to the Legislature all his acts and proceedings under and by virtue of Chapter 292 of the laws of 1861.'

In complying with your request, I beg leave respectfully to submit the following report made by me to the Assembly on the fifteenth instant in conformity with Chapter 292, of laws of 1861, and printed as Assembly document number twenty-one in the files of that body:—[See *ante,* p. 413.]

* * * * * * * * * * * * *

I take this occasion to add that ordnance to near one hundred thousand dollars, has been purchased under authority of Chapter 277 of the laws of 1861, and forms a portion of the sum of $2,873,501.16, stated in my annual message as paid from the appropriation of three million dollars, under that act, part of this ordnance was loaned to the General Government, but either has been or will be paid for or replaced by its agents, and will be retained in this State. This expenditure should therefore, I think, be charged to the appropriation made by Chapter 292 above referred to.

Respectfully submitted,

E. D. MORGAN."

January 31. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 31, 1862.

"In transmitting the accompanying report of the Quarantine Commissioners, I desire to call your special and favorable attention to the following recommendations contained therein, namely: That only the diseases known as yellow fever, ship fever, small-pox and cholera be classed as quarantine diseases; that it be made the duty of the Health Officer to send yellow fever patients to the Floating Hospital, Ship fever patients to Ward's Island, and small-pox patients to Blackwell's Island; that the boarding sta-

tion be permanently located and fitted up on the water front of the Quarantine grounds now owned by the State; to provide for the collection from owners and consignees of vessels, and other designated sources of expenses incurred in treating Quarantine diseases; to provide for the location, designation and maintenance of anchorage ground, for infected vessels in the lower bay during Quarantine season; to provide means for defraying the necessary Quarantine expenses; and to devolve the medical charge of the Floating hospital upon the Health Officer.

Your attention is also called to the fact that the Commissioners have received no compensation for their services, since the first of January, 1861, nor have they been reimbursed for personal expenses.

The cost of the support and maintenance of the Floating Hospital has been defrayed as will be seen by the Commissioners of Emigration, but the reduction of their income occasioned by the falling off in immigration renders it necessary for the Legislature to make suitable provision for this object for the future.

The Quarantine Commissioners have performed their important duties most satisfactorily, exhibiting in the whole course of their administration an enlightened regard for the interests of the public at large, as well as attention to the immediate care of Quarantine affairs.

The essential object sought in the appointment of Quarantine Commissioners has been accomplished, and I feel justified therefore in recommending that the services hitherto performed by them be transferred to the Commissioners of Emigration, and that so much of the Act of March 6, 1857, as authorizes the appointment of a Board of Quarantine Commissioners be repealed. I am sure that this change will meet the approval of a majority, and, I have no doubt, of all the Quarantine Commissioners.

E. D. MORGAN."

February 19. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 19, 1862.

"In reply to a resolution which I have had the honor to receive from your honorable body, in the following words:

'*Resolved*, That the Governor be requested to inform this House what provisions (if any) have been made to pay the parents, wives or orphans of the State volunteers, who have so nobly fought and fell in sustaining the Constitution of our country."

I respectfully state that by chapter 9, section 6, of the Laws of Congress, passed at the extra session in 1861, it is enacted: 'That any volunteer who may be received into the service of the United States under this act, and who may be wounded or otherwise disabled in the service, shall be entitled to the benefits which have been or may be conferred on persons disabled in the regular service, and the widow, if there be one, and if not, the legal heirs of such as die, or may be killed in service, and in addition to all arrears of pay and allowances, shall receive the sum of one hundred dollars.'

No appropriation has been made by Congress, so far as I have information, to pay the several sums as provided in the act above referred to. The War Department, however, by a General Order, dated October 4th, 1861, directs: 'In the settlement of accounts of deceased volunteers the Second Auditor will place to the credit of the man, the one hundred dollars bounty, granted by the sixth section of the act approved July 24, 1861.'

It is supposed that Congress will, at its present session, make the appropriation required by the act herein mentioned.

E. D. MORGAN."

March 3. To the Assembly:

"ALBANY, *March* 3, 1862.

"On the 25th of January I answered, in part, the following resolution of the Assembly, [see document 33]:

Resolved, That His Excellency the Governor be requested to inform the Assembly whether the volunteers enlisted pursuant to the act of April 16, 1861, and subsequently honorably discharged on inspection, have been paid for the time they were in the service; and if not, whether any legislation is necessary to enable them to be paid?

I then said, in reference to the inquiry contained in the latter part of the resolution, that it had been referred to the Judge Advocate General for examination. I now communicate his answer on that point. I take the liberty of adding also, a copy of paragraph 1 of General Orders No. 51 of the War Department, showing the rule adopted by the General Government, in respect to individuals discharged within three months after entering the service, for a disability which existed at the time of muster.

It is clear, I think, that payment will not be made by the General Government, and cannot be made by the State under any existing law, to the persons referred to in the resolution. Legislation will therefore be necessary before the class of volunteers referred to can be paid. The question of policy is one for the consideration of the Legislature.

Respectfully submitted,

E. D. MORGAN."

The following is the letter from the Judge Advocate General:

STATE OF NEW YORK:

JUDGE ADVOCATE GENERAL'S DEPARTMENT,
NEW YORK, *February* 25, 1862.

To His Excellency EDWIN D. MORGAN,
Governor of the State of New York:

GOVERNOR.— That portion of the resolution of the Honorable the Assembly, which inquires 'whether any legislation

is necessary to enable the volunteers enlisted pursuant to the act of April 16, 1861, and subsequently honorably discharged on inspection, to be paid,' having been referred to me by your Excellency, I have to state in answer thereto, as follows:

The act referred to provides that 'the officers and men of said force shall receive the same pay and rations while in service under the provisions of this act, as officers and men of the same rank and arm of service in the army of the United States;' also, that 'the officers and men of said force, except when in actual service, shall be paid only for the time actually spent in their organization, drilling and instruction.'

The case of those volunteers who were discharged upon being found physically disqualified, upon inspection by the medical examiners, does not in my opinion come within the provisions of the act, and they cannot therefore receive pay under it.

Enlistment is in the nature of a contract, by which the party enlisting agrees to render to the government the military service of an able bodied man, and he is received at the recruiting office on the faith of his implied assurance that he is such; the risk of a subsequent rejection properly belongs to him, because he is presumed to be aware of his own physical condition.

Those persons, then, who were rejected upon medical examination, were physically incapable of performing the contract which they proposed to make, and consequently are not entitled to receive pay for services which they did not and could not render; nor could the State, in case such payment should be made, equitably claim its reimbursement by the Federal Government.

Additional legislation would therefore be necessary to provide payment for the persons referred to; the propriety of such legislation depends upon the considerations above set forth, and the fact that the State has already been the

loser by furnishing them with rations and quarters previous to inspection and rejection.

All of which is respectfully submitted.

WM. HENRY ANTHON,
Judge Advocate General, State of N. Y.

March 18. To the Legislature: Transmitting resolutions adopted by the Legislature of Maine, urging an increase in the tariff on wool and other agricultural products.

March 14. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 13, 1862.

"I transmit herewith copies of my letters of instruction, and the reports of the superintendent of the Albany county Penitentiary, in compliance with the following resolution of your honorable body:

'*Whereas,* His excellency the Governor, in his annual message, has informed the Legislature that 'the actual receipts of the State prisons are fully a quarter of a million dollars less than the expenses of the prisons,' and 'finding in the latter part of the summer that the duties connected with the raising and equipping of volunteers for the service of the general government were such as would prevent me from making my annual visit to the prisons, I deemed it advisable to request the superintendent of the Albany county penitentiary, whose long, intimate and successful connection with penal institutions peculiarly qualified him for the duty, to visit the State prisons, to examine into their police and fiscal management, and to report the result of his observations to me in writing. This he has done. I desired him to make suitable inquiries in regard to the alleged severity of punishment inflicted at Sing Sing; and respecting the administration of the affairs of the Lunatic Asylum connected with the prison at Auburn. I also requested him to make such inquiries as would enable him to determine

if the recent murder committed at Clinton prison was the result of any insufficiency in the rules or discipline of the prison: therefore,

Resolved, That his excellency the Governor be requested to transmit to the Senate copies of his instructions and the reports of the said agent, at his earliest convenience, if not incompatible with the public interest.'

It is but proper to state that these papers were not prepared for publication. They are however, communicated without revision.

Respectfully submitted,

E. D. MORGAN."

"EXECUTIVE DEPARTMENT,
ALBANY, *July* 16, 1861.

Gen. AMOS PILSBURY, Albany:

DEAR SIR.—It is important, in my judgment, that a careful examination should be made into the discipline of the prisons of this State by some person experienced in the superintendence of penal institutions; and I deem it essential, also, particularly in view of the present general prostration of the business of the country that a proper inquiry should be made into their financial management as connected with contracts for prison labor, to the end that by anticipating any embarrassments likely to result from the cause referred to, measures may be taken to prevent, as far as possible, any loss to the State.

Your familiarity with the fiscal management, as well as with the police of correctional establishments, peculiarly qualify you to prosecute a series of investigations of this character with thoroughness and advantage; and I therefore desire that you proceed without delay, first to the Clinton State prison, for the purpose of personally examining into the discipline of that institution; and I particularly request that you make such inquiries as will enable you to determine if the recent melancholy occurrences there were the

result of any want of foresight or care, or a consequence of any insufficiency in the rules or discipline of the prison.

I desire you, also, to inquire fully in respect to the contracts for prison labor especially as regards price, character, and profitableness of employment, responsibility of contractors, and the influence which, in view of the kind of labor, the times are likely to exert on the contractors; and also to give such scope to your investigations as will enable you to recommend other employments, should circumstances render it necessary to make a change in that respect. I wish you to make any other inquiries than those enumerated into the affairs of the prison, either general or particular, which your experience may suggest to you as proper. I will request the agent and warden of the prison to extend to you every requisite facility for a full examination.

You will please present to me, in the form of a written report, the result of your inquiries, accompanying it with any suggestions or recommendations which your information and judgment may dictate.

Yours respectfully,

(Signed) E. D. MORGAN.

To His Excellency Governor E. D. MORGAN:

In compliance with your directions, I have visited and examined the Clinton prison, and would respectfully submit the following report:

On my arrival at the prison, I was cordially received by the agent and warden, who conducted me through every part of the prison and afforded me every facility in his power to examine it, allowing me free intercourse with the officers and prisoners for that purpose.

The number confined in the prison at that time was 494, of whom 345 were under contract, viz., 233 to J. D. Kingsland, iron contract, and 112 to Wood, Willard & Prentice, shoe contract, leaving 149 to be employed by the State.

There is one block of 544 cells, in which, together with the hospital and other rooms, in an emergency, 600 men might be accommodated.

SHOE CONTRACT.

The contractor's agent says, they are doing well with the number of men employed; thinks they will want fifty more men soon; can dispose of all nailed work without trouble as fast as made.

On the other hand, Mr. Wood, the contractor, says, unless the times improve, they will have to abandon their contract in a few months. They owe the State for the labor of the past four months, amounting on June 30th to $3,417.66. Their contract stipulates for from one to two hundred convicts, is dated July 1st, 1860, and expires July 1st, 1865. Price 18 cents per day for the first six months and 36 cents per day during the remainder of the time, payments to be made monthly in cash. There are two overseers paid by the State.

IRON CONTRACT.

Two hundred and thirty-three men were engaged on this contract, divided into nine departments. In this contract everything seems to have been done for the interests of the contractors, while those of the State have been almost entirely lost sight of. The State is obliged to furnish the best men, and this accounts for the large number remaining for it to employ, many of whom ought to be employed on contracts, as they appear to be able bodied men, especially since the contractors, at the present time, are desirous of adding 50 more men to the force now employed by them.

Some parts of the iron work are well calculated to be carried on by convict labor, but most of it, in my opinion, is not. The men are in so many different shops and places, that it requires a large force of officers to guard them, and to preserve order and silence. There are eleven keepers and six watchmen in charge of the men on this contract.

In the rolling mill, where the officer was lately murdered, there are fourteen prisoners at work day and night, with two keepers; they change at 12 o'clock, noon, and at 12 at night, each gang working twelve hours. The men who work in the forge change in the same manner. In this branch there are fifty convicts employed, twenty-five during the day and the same number at night.

The mines extend under ground about 500 feet; thirty convicts work there by lamplight in charge of two keepers, one at the entrance of the mine and the other with the men. J. D. Kingsland has two contracts, one for one hundred men at fifty cents per day, and the other for from fifty to one hundred men at thirty-five cents per day.

On the 30th of June there was due to the State on this contract $16,756.70, for which the State holds an endorsed note, past due, of $7,500, leaving a balance of $9,256.70; the contractor having paid nothing for the months of December, 1860, January, February, March, April, May and June, 1861, although by the terms of the contract he is bound to pay monthly.

PUNISHMENT.

I witnessed the showering of two convicts for infraction of the rules. It was done by the principal keeper, in the presence of the physician. One barrel of water was administered to each, and in my opinion was prudently applied. From the record it would appear that this is seldom used; punishment by confinement in dark cells, except for a protracted time, 'yoke,' &c.. are not recorded.

DISCIPLINE.

The men march to and from their labor in excellent order, better than at any other prison that I have visited in several years. In the nail shop, where there are about sixty convicts, the discipline is good, but in all other, eight or nine, departments connected with the iron contract it is

very defective, the men having to pass and repass each other often, and, being scattered over much ground, have opportunities of communicating with each other, which, owing to the nature of the work carried on, cannot well be prevented.

The men while marching and in the dining room are under excellent discipline; but in the erection of buildings for the iron works, order and system, with a view to the supervision of the convicts, have, I think, been entirely neglected — the interest and wishes of the contractors seem only to have been consulted.

The new building for the convicts engaged in shoemaking for Ward, Willard & Prentice, is a three-story well lighted edifice 150 feet long and 40 feet wide, with ample room for working 300 or 400 convicts; there are now 112 prisoners distributed in and through two stories of this building, scattered about in companies of six to ten men each, sitting or standing in all directions, making it very difficult for the officers in charge to see all their men at one time. In these shops, with the men properly arranged, the best discipline might and ought to be maintained, as there is no excuse for not arranging them so that the officers can have easy and perfect control and supervision of all the men under their charge.

In the ' State ' shop, the men making shoes, clothes, &c., for the use of the convicts, were in good order, and under better supervision than those employed under contract.

THE MURDER AND ESCAPE.

The rolling mill, where the murder was committed on the night of the 11th instant, is situated at some considerable distance from the main prison building, containing the cells. There are 28 men worked in the building, fourteen from 12 o'clock noon to 12 o'clock at night, and fourteen from that time until noon the next day. The principal keeper with four under keepers are aroused about 11½ o'clock

every night; they take the men from the rolling mill, and also from the forge, to the building containing the cells, and then take the same number from the cells to the buildings containing the rolling mill and forge, thus keeping these two branches of the iron manufacture in constant operation, day and night.

On the night of the murder, when the night watchman who was on duty in the yard left for the purpose of calling up the keepers to make the usual exchange, one of the convicts asked the keeper for a pass to use the next day. Another convict (Sewall) watching his opportunity when the officer at the other end of the building was engaged, struck Wright, the keeper, with a bolt of iron, killing him instantly. He then took from his pocket his revolver, watch, and *key* of the door or gate of the building, unlocking which he and six others made their escape: one was taken before he could get over the pickets, the other six were captured and returned on the morning of the 13th instant. The other officer was also knocked down, but not much injured. The remaining seven convicts made no attempt to escape, but raised the murdered officer, gave the alarm, went and called up the physician, and then returned and assisted in conveying the dead body to the hospital. The night was extremely dark. I believe this officer lost his life by carelessness, and in consequence of working the men nights. I do not believe it is right to thus needlessly expose the lives of the officers for the pecuniary benefit of contractors.

I was informed by a gentleman (late agent for many years for the iron contractors) that this work could all be done by the convicts in the day time, with very little additional expense to the contractors. I think such parts of it as cannot be performed in the day time should be carried on outside of the prison by citizen labor, especially since there is nothing in the contract on the part of the State authorizing the working of the convicts at night. I believe

it highly improper, and injurious to good order and correct discipline, to work the prisoners at night; and no pecuniary considerations can, in my opinion, justify this practice. In no other prison in the United States is it done to my knowledge.

The convicts should be worked constantly during the day, but never during the whole night, except in an emergency. The safety of the prisoners, the safety of the officers, good morals, good discipline, and the correct administration of criminal law, in my opinion, require the abolishment of all night work by convicts. I am only astonished that prisoners, having such opportunities, have delayed making the attempt to escape so long.

FINANCIAL CONDITION.

The earnings will be greater this year than for the fiscal year ending September, 1860, while, at the same time, with an average the present year of fifty more convicts, the expenses will be considerably less bearing strong testimony in favor of the vigilance and economy of the present agent and warden.

In view of the large amount now due by the contractors, I strongly recommend the Agent and Warden to obtain from them a lien upon all manufactured and unmanufactured goods, stock, tools, machinery, &c., belonging to them and upon the prison premises, as additional security, and thus save the State from all chance of ultimate loss.

(Signed) AMOS PILSBURY.

Albany, July 27th, 1861.

STATE OF NEW YORK:

EXECUTIVE DEPARTMENT,
ALBANY, *July* 31, 1861.

Gen'l AMOS PILSBURY:

SIR.—I desire you to proceed first to Sing Sing prison, and thence, after due examination there, to Auburn prison,

for the purpose of making examinations with respect to the discipline and fiscal management of those institutions.

At Sing Sing you will please make such inquiries as will enable you to determine how far the complaints made against the mode of punishment in that institution are justified by facts. In October last, serious charges were made to me, and were persisted in, that punishments, unduly severe, had been inflicted upon convicts imprisoned therein. I called the attention of the Legislature to this fact in my last annual message, and recommended the appointment of a commission to inquire into these and other facts connected with the general discipline and management of the prisons; but for want of time, perhaps, nothing was done by that body. The importance of the subject induces me to ask your special attention to this matter. Some additional enlargement of the prison has been contemplated. Your familiarity with the construction of prison buildings will enable you to report understandingly upon the proper addition to be made at Sing Sing.

At Auburn I request that, in addition to examining the prison proper, you extend your inspection to the management of the Insane Asylum, connected with the prison — its police, treatment of patients, and expenditures — and to report to me in writing.

Very respectfully yours,

E. D. MORGAN.

To his Excellency Governor E. D. MORGAN:

In compliance with your directions, I left Albany on the 31st day of July last, to inspect, as far as practicable, the condition of the State prison at Sing Sing, and I herewith transmit to you the result of such examination.

I visited the prison on the next morning, and remained there until after the prisoners had received their dinner. They exceeded 1,200 in number, and marched into the din-

ing hall, placing themselves at the tables. After the chaplain had asked a blessing, they commenced their meal. The Agent and Warden were absent, having left in the morning for Albany, but I found the principal keeper and clerk at their posts. After dinner I walked to the prison again, and passed the afternoon there.

The next day I found the Warden at home. He passed some time with me, and I occupied the entire day in visiting the different departments, and in examining the books of the clerk and other officers. They appear to be kept in such a manner as can be made, so far as checks are possible, a perfect check or guard upon all the transactions of the institution.

I saw and conversed with several contractors or their agents. They expect the Legislature will relieve them from paying for the convict labor during the time they have been, or are unable to keep them at work. There are about seven hundred men unemployed at this time. In the hat, tapestry, cabinet, woolen cloth, and carpet shops, little or nothing is doing. In the shook shop nothing has been done for the past two months, but just now they are commencing work there again. The auger, file and stove shops have continued in operation constantly, and in the brass and hame contract shops work has not ceased at any time. The shoe contractors have kept a portion of their men (about 100) employed.

One contractor has continued to pay monthly, but none of the others have paid anything since last November or December, and there is probably now due the State nearly or quite $75,000. The Agent and Warden will draw this year from the State Treasury about $120,000, while he will only deposit about $25,000. Of marble, about $3,000 in amount will be sold this year.

I visited the prison again on Saturday the 3d of August, and occupied the forenoon in a general examination of the institution.

On the following Monday morning I found the Inspector, Mr. Forrest, at the prison. He received me coolly. With him I visited the yards, and examined the grounds, which are being extended by docking and filling in on the river side. He said the hard times made it impossible at present to obtain full labor for the prisoners, and if the Inspectors should annul the present contracts, (as they have a right to do,) in consequence of the neglect of the contractors to pay monthly, the convicts would be wholly idle.

I noticed the men scattered about inside and outside, reading and lounging about in all positions imaginable. I regret to say I saw no disposition on the part of Mr. Forrest to give me an opportunity to ascertain the real condition of the affairs of the prison, other than would be given any stranger who would visit the institution. Indeed he appeared very much annoyed to think that the Governor should have sent me, or any one else, to examine the prisons of the State. He said the Inspectors were elected by the people, and that to them they were accountable, and to no one else. I explained your object in sending me; that you had intended to visit the prisons in person, but your time being so constantly occupied you had found it impossible to do so, and therefore had requested me to visit them in your stead. In reply to which he said, that he would not consent that any one should assume or exercise duties which belonged to the Inspectors, at the same time expressing himself willing to give me, as an individual, any information I desired, but all I obtained from him was of a very general and superficial character indeed. It was difficult for me to see any one except the Inspector or Warden; the contractors and their agents evidently looked upon me with suspicion, and avoided me. Mr. Forrest said, "the Governor had recommended to the Legislature to appoint a committee to visit the prisons, but they had not done it, and the Inspectors felt they had reason to complain of his Excellency's action in sending me or any one else to ex-

amine into the affairs of the prison without giving them notice of his intention."

I remained at the prison until August 6th, but could not obtain much additional information. I examined the punishment book, and found that about seventy-five convicts had received correction for insubordination during the month of July. Many were punished for "fighting" which, in my opinion, together with the frequent assaults upon officers, is strong evidence of the defective discipline.

Convicts are punished by being shut up in dark cells, by the yoke, or "crucifix," by showering, and by bucking, as it is called, although I was assured that the last mentioned mode had been abandoned, yet I saw by the record that it had been used in one instance, as recently as the 10th of July last. Four men were showered in my presence, two for *fighting* and two for other violations of the rules. In these cases the shower bath was prudently applied, and I think that mode of correction as "humane" and quite as potential as any other, provided it be done by the principal keeper in a careful manner; but in no case ought punishment of any kind to be inflicted by a subordinate officer, because, in irresponsible and unskilful hands, any mode or degree of punishment may be so administered as to make it dangerous to the convict.

In regard to the particular case concerning which complaint was made to your Excellency in October last, I was assured by an officer and agent, who were present, that no extraordinary punishment occurred on the occasion, and that the prisoner, on coming out of the shower bath, was laughing, and exhibited no appearance of being injured. This was all I was able to learn.

I visited the female prison several times, and was well received by the matron, who conducted me through every portion of the department, explained the modes of correction, &c. There are now 141 female convicts in charge of one principal matron and seven assistants; about half of these

prisoners were idle, but were in very good order, the rest were engaged in sewing, washing, housework, &c., a few being at work on hats.

They are at present building additional cells to the male prison by raising the roof and adding another tier of cells, making them six tiers in height; by this means 200 additional cells will be gained. But the building might have been extended on the south or north, and four hundred cells added to it for about the same cost of these 200 cells, which, in my opinion, would have been a much better plan. It is said, however, that it will now be practicable, under the new roof, to give the whole building and cells better and more proper ventilation.

The discipline of the whole prison is far from perfect, and might be much improved. The prisoners are scattered about, some sleeping and reading, and others are busy in making small articles of no use. I observed that, in despite of the rules, nearly all of them were always gazing at me as I passed through the shops and yards with the principal keeper.

All of which is respectfully submitted.

AMOS PILSBURY.

Albany, August 8th, 1861.

To his Excellency Governor E. D. MORGAN:

I arrived at the Auburn prison on the 21st of August, and found most of the convicts at work. In the shoe department about 150 men are employed, of which number 100 are making army shoes. The contractors have engaged to furnish the government with 75,000 pairs, and expect to manufacture one-third of that quantity at the prison during the next four months. The shops are spacious and ample for the different kinds of work carried on in them, and might accommodate a much larger number of hands than are now employed.

The agricultural, cabinet, and cooperage contracts re-

quire a great deal of room for manufacturing purposes, and also for storage. The hame, tool, machine and shoe departments require less of room, and these employments are better suited to a prison, as they afford better opportunities to oversee and control the convicts.

The discipline at Auburn, as in both of the other State prisons, is not what it should be; the prisoners stare at visitors, and on inquiring why some of them were idle, I was told they had finished their work for the *day*.

There are 802 convicts in the prison, about 680 of whom are engaged on contract work. The earnings will be about the same as those of last year, while the ordinary expenses will be somewhat less. If the contractors pay the sums now due from them, (about $63,000), the earnings will exceed the ordinary expenses by about $20,000, for the year ending September 30th, 1861. The new block of cells is nearly finished, and the prison will then contain 1,000 cells, they are 3½ feet wide, and are well ventilated. The old cells are in very bad condition indeed, and greatly need new doors and new galleries. This block of cells, I believe, was the *first* ever built for the separate confinement of convicts in the prisons of this country.

Punishment by showering has not been allowed for several years. I noticed several men wearing heavy balls and chains, and two others with the iron cap or cage upon their heads, at work. I was informed that very little correction was found necessary to secure obedience and good order; confinement in dark cells, the yoke, and "bucking," (as it is called,) are the only punishments inflicted.

The hospital is well arranged and properly adapted to the comfort and care of the sick. There are side rooms for water closets and baths, and for cooking, and also some separate apartments for contagious diseases. The whole is sufficiently large to accommodate from 50 to 100 patients in an emergency. There were only six inmates in the hospital when I visited it.

The chapel is the best I have ever seen in a prison, and the dining room is excellent.

The discipline at Auburn, in some respects, is better than at Sing Sing, but still it is not so rigid nor so good as it was twenty-five years ago. The Auburn prison ought to be the model for the whole country. With its extensive yard, surrounded by high stone walls, its costly well arranged buildings for every use, its admirable dining hall, hospital, chapel, and workshops, and with every facility for easy and correct supervision, there ought to be no reason for defective discipline; but I do not believe there will ever be much improvement in the management of our prisons while the inspectors are elected, (as they now are under the Constitution of the State,) and so long as party politics controls and governs their operations.[e] From my own experience, and from all that I have gathered of the experience of those who have made prison discipline, and the management of prisons and prisoners the study of their lives, I think it may be set down as an established truth, that politics and prisons are incompatible with each other. Whether it regards pecuniary results, or the moral training and reformation of the culprit, the bestowment of office as a prison keeper or director on mere political or party consideration, will always end in disappointment and unsuccess. There is an " eternal fitness " in all things, and successful men in the ordinary avocations of private life act entirely upon that principle. Were they to do otherwise, they could not succeed in their aims. For the right management of our prisons, both as regards the public and the convict, their direction must be intrusted to those who have aptitude and capacity for that peculiar position, independent of their political leanings or opinions. If prisons are ever to become reformatory and self-sustaining their whole management and direction must be kept out of the arena of

[e] Const. 1846, art. 5, § 4; see am. 1876.

politics. As it now is, when the office of State Prison Inspector is elective, and merged into the general political questions and machinery of the day, the people may once in a great while *happen* to *stumble* upon "the right man for the right place;" but it is much like a lottery in which the blanks immeasurably predominate.

I visited the Asylum for Insane Convicts, and was conducted by Dr. Hall over the grounds and through every part of the establishment. I found them all very clean and in good order. Dr. Hall also exhibited his books and accounts of money received and expended, and gave me every information I desired. He appeared anxious to manage the asylum with as much economy as possible. The buildings are neat and very substantial; the front yard is handsomely laid out and filled with flowers and shrubbery. In the back yard and the lands adjoining, large quantities of vegetables are raised, all the labor being performed by the patients.

From the money appropriated by the last Legislature, (viz., $16,000) the Superintendent thinks a balance unexpended of at least $2,000 will remain. The expenses for the last quarter have been less than in any quarter before; the inmates are well cared for, and every attention is given them that their unfortunate condition requires. Some of the most violent cases of insanity that I have ever met with I saw there.

The Superintendent's estimate of expenses for sixty inmates, for the present year, made to the last Legislature, was $14,600. The actual expense, with an average of eighty-five, will be about $14,000. He thinks the ordinary expenses and repairs will be less for the coming year than they have been during the past year. The average expense for each inmate is large by reason of the small number; the general expenses being nearly as great for a small as for a larger number of patients. I see no way of lessening the expense except by making it a department of the prison.

This is a noble institution, and worthy of the fostering care of the State of New York.

I am, very respectfully,
Your obedient servant,
AMOS PILSBURY.

Albany, August 28th, 1861.

April 1. To the Legislature: Transmitting the following resolution adopted by the Legislature of Maine in March:[18]

"*Resolved,* That the people of Maine have witnessed with patriotic pride, the triumph of the national armies in the Valley of the Mississippi, and they hereby extend their congratulations to their loyal brethren of the West, upon the undying laurels they have won in the rapid and splendid succession of victories achieved by them. To the troops of Illinois especially, for their heroic conduct at Fort Donelson the country owes a debt of gratitude which cannot be too heartily acknowledged, and which can never be repaid."

April 17. To the Senate:

Veto of a bill entitled "An act to facilitate the construction and extend the time for the completion of the Albany and Susquehanna railroad."

"The provisions, substantially, of the bill are, that it appropriates two hundred and fifty thousand dollars to aid

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[18] The New York Legislature, on the 17th of February, adopted the following resolutions on the recent military achievements:

"*Resolved,* That we hail the news of the recent victories of the national arms at Fort Henry, Roanoke Island, Fort Donelson and Savannah and other points along the lines of the Grand Army of the Union, with lively emotions of patriotic rejoicing, and hereby express the heartfelt thanks of a grateful state to the brave officers and soldiers who have covered themselves with glory by their heroic achievements, and to the War Department for the renewed evidence of vigor displayed in the conduct of the war, and pledge to the government of the United States the undivided support of the people of the State of New York in the gigantic work of suppressing this monstrous and unnatural rebellion, and restoring the supremacy of the Constitution and laws of the Federal Government over every rood of our national territory.

Resolved, That the keepers of the capitol and state house be instructed to illuminate these buildings to-night in honor of the victories gained by our Army and Navy."

in building the Albany and Susquehanna railroad, and imposes a State tax of three-sixteenths of a mill on each dollar of the valuation of the real and personal property in this State, to meet the appropriation thus made. It authorizes the Comptroller to demand and receive of the said company stock therein to the amount of two hundred and fifty thousand dollars and exonerates the State from liability on account of said stock. It also extends the time for the completion of the road, in compliance with the conditions of an act authorizing the city of Albany to make a loan to said company, five years beyond the time now prescribed by law.

Convictions of duty have compelled me, upon three previous occasions, to return to the Legislature, with my objections, bills having in view the same general object, with that sought in the present act.

In returning the bill of last year [See Senate Journal, page 495,] I said: 'In assigning my reasons for withholding my assent from the bills passed at the last and the preceding session, 'to facilitate the construction of the Albany and Susquehanna railroad,' the conviction was distinctly expressed that such a donation of the public money as was therein made, fell clearly within the requirement of section nine, article first of the Constitution, which declares that the assent of two-thirds of the members elected to each branch of the Legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes.' Upon both occasions it was stated that the bills lacked the constitutional vote necessary to give them vitality, inasmuch as they had not, in either instance, received the assent of two-thirds of the members elected to each branch of the Legislature. At the same time I stated that it was within the power of the two houses to obviate this palpable objection to the bill under consideration, by conforming their action to the requirements of the Constitution in the particular mentioned.

The objections urged were sustained by the Legislature on each of the occasions referred to.

'I call attention to these facts to show that there has been no concealment of my views on this point of constitutional construction; and especially because the bill herewith returned comes to me with the certificate of the presiding officers in both branches of the Legislature, showing it to have been passed by the concurrence of a majority of the members elected to each house, three-fifths being present. Having, therefore, received but a majority of affirmative votes, and not two-thirds, my objection applies with the same force against the present as against the former bills for the same object, in this respect.

'Since the bill was delivered to me, I have carefully examined the precedents and impartially weighed the arguments submitted for my consideration, and zealously urged by those whose views, in this regard, differ from my own. But it is sufficient for me to say, that my convictions on this point have undergone no modification. On the contrary, reflection has but served to deepen them; and hence, no alternative remains to me save either to violate the dictates of my judgment and conscience, or to withhold my signature from the bill.

'Whilst I am frank to admit that, in view of the existing posture of public affairs, I cannot regard the present as an auspicious time in which to prosecute new works of improvement, or to add to the already heavy burthens of taxpayers, I could yet waive my views of mere policy in deference to the wishes of the representatives of the people in the co-ordinate branches of the Legislature. But, when the question involved is one of constitutional duty, and of fealty to that oath which places the requirements of the Constitution above all considerations of utility and precedent, I can see but one path of duty, and that is obedience to constitutional convictions.'

The reasons assigned for withholding my signature from

the acts heretofore passed, were, in each instance, of sufficient cogency to arrest the final passage of the proposed measure. Prominent among the objections urged on these several occasions, and in my estimation overruling all others, was the failure on the part of the Legislature to pass the bill in accordance with the requirement of section nine, article one of the Constitution, which declares 'the assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property, for local or private purposes.'

Whilst some of the objectionable features contained in the two first bills passed in aid of this corporation, have been obviated in the present bill, I regret that the radical defect to which I have alluded, applies with equal force to the passage of that herewith returned. I can perceive nothing in its provisions which takes it out of the scope of the constitutional requirement to which I have adverted. It is true the bill declares the appropriation to be for 'public purposes,' but a simple declaration to that effect cannot make it so, if the object to which it applies be private or local in its character. Nor does the incidental provision that in cases of invasion or insurrection, soldiers and munitions of war shall be transported over said railroad free of charge, in anywise obviate the constitutional requirement of a vote of two-thirds for a proper passage of a bill of this character. The fact still remains that the money appropriated is in aid of a corporation created with a view to personal profit, whose property and franchises are owned and controlled by individuals, and whose sphere of operations is confined to a comparatively limited locality. The persons incorporated are not public servants; they make their expenditure without accountability to the public; they are not subject to process of impeachment; the profits of the enterprise are subject to division to individual corporators; they prescribe the charges for freight and pas-

sengers and the company belongs to the class of what is called in the Constitution 'individual, Association or Corporation.'[f]

So, also, if the constitutional inhibition against appropriations for local and private purposes by a vote of less than two-thirds of the number elected to each branch of the Legislature,[g] can be defeated by an assignment of stock, then a mere majority of the Legislature may make the State a partner in the various railroad, bridge and similar corporations, within its limits. While it is contrary to the wise policy of the State to hold or traffic in the stock of corporations, I cannot see that this provision in any manner or degree changes the character of the appropriation from the treasury. It will be observed that the Comptroller may or may not, at his option, demand the stock, while the payment of the sum fixed in the first section is imperative. All things considered, this would seem rather in the nature of palliation for drawing moneys from the treasury, as it cannot seriously be claimed that a nominal amount of the capital stock of this road yet to be constructed and equipped, and its business to a large extent uncertain, is an equivalent for the moneys appropriated, especially as the stocks in the most prosperous of the great lines already completed and in operation, have an average market value much below par. Evasions of the plain requirements of the Constitution, even if successful in attaining a coveted object, are of evil example, and serve to pave the way for grosser departures from sound principles of public policy and constitutional requirements.

My convictions in regard to the character of the proposed appropriation and the vote requisite to its constitutional enactment, have been frequently and unreservedly expressed. The provisions of the Constitution may be incompatible with the attainment of the objects deemed desir-

[f] Const. 1846, art. 7, § 9.
[g] Const. 1846, art. 1, § 9.

able, but the responsibility rests not with the Executive, whose duty it is to conform his action to the provisions of that instrument. In deciding to withhold my signature, I claim only the same right of opinion which is freely conceded to others. Regarding the bill now returned as appropriating the public money for a local and private purpose, without having received the assent of two-thirds of the members elected to each branch of the Legislature, as required by article first, section nine of the Constitution, my signature is withheld therefrom, and it is returned to the Senate for reconsideration."

The bill was not passed over the veto.

April 19. To the Assembly: Transmitting the report of the Quartermaster-General, and also the report of the trustees of the Sailors' Snug Harbor in the city of New York.

April 22. To the Assembly:

"ALBANY, *April* 22, 1862.

"I transmit herewith the report of a Commission appointed by me in the latter part of December last, to devise and report a plan for defending and obstructing the Narrows between forts Richmond and Hamilton, for the purpose of preventing the passage of hostile ships of war into the harbor of New York.

E. D. MORGAN."

[For report see document No. 240.]

April 23. The Legislature adjourned without day.

HORATIO SEYMOUR,[a] Governor.

The Legislature met on the 6th, and the message was sent to the Senate on the 7th. Owing to a contest over the election of a speaker, the Assembly was not organized until the 26th of January. The message was sent to the Assembly on that day.

ANNUAL MESSAGE.

To THE LEGISLATURE.— We meet under circumstances of unusual solemnity to legislate for the honor, for the interest and for the protection of the people of the State of New York. The oath,[b] which we have taken, to support the Constitution of the United States and the Constitution of the State of New York and to perform our duties with fidelity, has at this time especial significance. It teaches us to look upon each of these constitutions as equally sacred, that each is to be upheld in its respective jurisdictions. At this time, the power of the one is openly defied by armed rebellion, while the other is endangered by the confusion and discord growing out of civil war. This "oath, declaration or test," is not a mere ceremonial; it is a part of the tenure of the offices we hold. Until we have thus solemnly submitted ourselves to the commands of these instruments, giving up our personal views and opinions and pledging ourselves to obey their requirements, we are not permitted to perform one official act.

To uphold the General Government, New York has sent since the outbreak of this war two hundred and twenty thousand soldiers into the field. To organize this vast army, my predecessor, and those acting under his direction

[a] For portrait see Vol. IV, p. 640.

[b] Const. 1846, art. 12.

in his military staff, have used unwearied labor and shown high capacity. The duties growing out of this service have been greater than those falling upon the officials of other States, and in their performance compare favorably with the conduct of the war on the part of the General Government. While our soldiers are periling their lives to uphold the Constitution and restore the Union, we owe it to them, who have shown an endurance and patriotism unsurpassed in the history of the world, that we emulate their devotion in our field of duty. We are to take care when they come back that their home rights are not impaired, that they shall not find, when they return to the duties of civil life, that the securities of their persons, the sanctity of their homes, or the protection of their property have been lost by us, while they were battling for their national interest in a distant field of duty.

I shall deem it my duty to fill all vacancies in official station in the army by promotion for meritorious services or gallant conduct in the field; this is a measure of justice, as it will give to them the rewards where they have been fairly earned, and will stimulate both officers and men, by a laudable ambition, to excel in patriotic services in an honorable pursuit.

OUR STATE AFFAIRS.

While so many parts of our country are laid waste by war, their towns and cities desolated, their homes destroyed, their citizens slaughtered, and all that makes social happiness crushed out beneath the tread of armies, we have cause for gratitude that in this State the circle of its munificent public charities is in full and beneficent operation; all forms of infirmities, suffering and want have been relieved. Our schools, academies and colleges are in successful operation; institutions designed to rescue the young and helpless from careers of vice, are still engaged in the prevention of misery and crime. Our prisons, under

a liberal system designed to reform as well as punish, still protect our community against convicted criminals. Our courts are open for the security and protection of persons and property. Mechanical and agricultural pursuits are in the main successfully conducted. Our vast internal and foreign commerce has assumed proportions far beyond that of any former period. But for the overshadowing, gloomy cloud of war, and its heavy drafts upon the blood and treasure of our citizens, there could not be found four millions of people in the enjoyment of greater happiness and prosperity.

The continued ample support extended to the great charities of the State, even in the midst of a war which would tax to the utmost the energies of any nation, past or present, is a striking evidence at once of the enlightened benevolence of our people and the greatness of our resources. It is not necessary for me to dwell upon the importance of those truly noble institutions, the New York State Lunatic Asylum, the New York Institution for the Deaf and Dumb, and for the Blind, the State Asylum for Idiots, and the State Inebriate Asylum. They are eminently entitled to the proper patronage of the State. The Orphan Asylums and hospitals of the State should be fostered at a period when each battle deprives many households of their natural protectors, and increases the number of those who may properly claim the support of charity or the care of institutions for the sick and wounded.[1]

I recommend the enactment of a law authorizing the appointment of a member of the medical profession as a Commissioner of Lunacy, whose duty it shall be to examine into the condition of the insane now confined in the almshouses, poor houses, jails and private lunatic asylums.

[1] Besides the usual appropriations for charitable purposes, chapter 325, approved April 29, provided that every indigent deaf mute child under the age of twelve years should be placed in the New York Institution for the Deaf and Dumb, and there supported by the county where such child resided, but the expense could not exceed $150 a year.

The subject has been strongly urged upon the attention of previous Legislatures by the medical profession, and I am sure the humanity and propriety of the propositions are too manifest to receive any other than your favorable action.[2]

The annual report of the Superintendent of Public Instruction, shows that 829,989 pupils attended school in 1862, being a larger attendance than for any previous year. It will also appear that a greater number of teachers were employed than heretofore, the increase being drawn from the female portion of the community, that a larger sum was paid for teachers' wages, and that the schools were in session for a longer period, in the aggregate, than during any preceding year.

The annual report of the Regents of the University will show that the colleges and academies of the State, notwithstanding the drain of the war on their numbers, have continued in active and vigorous operation. The number of students in attendance has been thirty-five thousand seven hundred and forty-eight, a little more than one thousand less than for the previous year. The means of higher education are more ample, and its character more thorough and elevated than they have ever been.[3]

The Society for the Reformation of Juvenile Delinquents in the City of New York, and the House of Refuge of Western New York, will submit to you their annual reports. I commend these important institutions to your favorable consideration.

It appears from the Report of the Inspectors of State Prisons, that the number of convicts in the prisons on the

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2 The office of state commission in lunacy was established in 1874 by chapter 446. The act required the commissioner to be " an experienced and competent physician."

3 A training school for primary teachers was established at Oswego, by chapter 418, approved May 4, 1863. The act appropriated $3,000 annually for two years, and the school was to be under the supervision of the Superintendent of Public Instruction.

thirtieth of September last, was two thousand four hundred and ten; the receipts into the treasury for prison earnings during the fiscal year, were one hundred and ninety-one thousand and forty-three dollars and ninety-seven cents; and the payments therefrom, on account of the prisons, were three hundred and eleven thousand, seven hundred and forty-four dollars and eighty-one cents.

The annual report of the Superintendent of the Banking Department, shows that the total amount of outstanding circulation issued by that officer to Banks, Banking Associations, and Individual Bankers on the 30th of September last, was $42,239,836.

Of this amount $34,262,449 was issued to Banking Associations and Individual Bankers, and is secured as follows:

By bonds and mortgages...	$4,912,494.47	
New York State stock..	19,022,890.10	
Stock of other States...	438,466.67	
United States stock....	11,899,450.00	
Cash on deposit.....	103,720.60	
		$36,377,021.84
Held for incorporated banks under special laws.....		65,289.14
		$36,442,310.98
Aggregate held September 30, 1861.....		30,279,851.96
Increase of securities in 1862.....		$6,162,459.02
do circulation in 1862.....		5,633,696.00
do U. S. stock in 1862.....		6,810,150.00
Decrease in bonds and mortgages in 1862..		474,308.00
do N. Y. State stock in 1862.....		100,815.82
do Illinois State stocks in 1862...		36,783.33

Number of banks doing business	305
do do closing and insolvent	53
	358

The Superintendent of the Insurance Department, will exhibit, in his annual report, many facts connected with the important duties administered by him, of interest to the public.

The Commissioners of Emigration report that during the year 1862, seventy-five thousand nine hundred and eighty-two alien emigrants arrived at the port of New York, being an increase of ten thousand four hundred and fifty-three over the previous year. The Commissioners believe that a large immigration, much in excess of the past four years, will shortly commence from all parts of Europe. I recommend to your attention the suggestion contained in their annual report, and especially that with reference to quarantine. The city of New York, and the country at large are too much interested in the improvements of the sanitary condition of the emigrants, and the protection of that port from contagious and infectious diseases, to omit any measures which shall tend to protect it.[4]

I renew the following recommendation of my predecessor:

"A change is obviously necessary in the laws relative to excise so as to ensure their enforcement, especially in regard to licenses. At present, those who pay for licenses practically receive neither privilege or protection therefor."

The maturing principal and the interest on the State debt has been paid in coin. During the past fiscal year the debt of the State was reduced two millions one hundred

4 Chapter 358, approved April 29, established a quarantine at the port of New York, defined its scope and purposes, provided for the appointment of a health officer, and prescribed his powers and duties. The act contained numerous details relating to administration.

thousand dollars, by the redemption of that amount of the canal debt.

THE FUNDED DEBT.

The Funded Debt, on the 30th of September last, stood as follows:

Of Canal debt	$23,981,610.25
Of General Fund debt	6,505,654.37
Total State debt	$30,487,264.62

By abstaining from further borrowing, and by depositing the usual annual contributions to the credit of the Sinking Funds, the Comptroller estimates that the above debt will be substantially extinguished within twelve years.

Balance in the Treasury, including Canal Fund, October 1, 1861	$3,074,941.85
Receipts from all sources during the fiscal year ending with September 30, 1862	20,840,913.20
	$23,915,855.05
Payments during the same period	18,165,233.86
Balance in Treasury, October 1, 1862	$5,750,621.19

CANAL FUND.

Balance in the Treasury to the credit of the Canal Fund, September 30, 1861		$2,604,621.25
Received, during the fiscal year, from canal tolls, rents of surplus waters and interest on revenues	$4,854,989.67	
From proceeds of taxes	2,769,623.09	
From other sources	168,881.61	
		7,793,494.37
		$10,398,115.62

Payments during the same periods:		
For redemption of stocks.....	$2,120,000.00	
For interest on stocks.....	1,429,859.36	
To Canal Commissioners, repair contractors, superintendents, collectors and weighmasters	1,758,621.33	
Miscellaneous objects	509,331.10	
		$5,808,811.79
Leaving a balance to the credit of the Canal Fund on the 30th September, 1862, of		$4,589,303.83

The gross receipts from tolls, for the past season of navigation, was about five million one hundred and eighty thousand dollars. But this sum represents only the amounts paid into the public treasury for the use of the canals. Our citizens who are the carriers between the lakes and the city of New York, as well as those engaged in transportation upon our inland waters, and upon the ocean, derive a still greater advantage from our commerce with the West. The vast extent of our internal carrying trade can be stated only approximately, but may be safely put down at the following figures, for the past year:

Estimated tonnage of canals for 1862...	4,900,000 tons
Ascertained tonnage of railroads to Sept. 30th	6,600,000 "
For a single year.....	11,500,000 "
Estimated value of property carried on the canals for 1862.....	$141,000,000
On the railroads in 1862.....	159,000,000
For a single year.....	$300,000,000

It may be added that seventy per cent. of the values of railroad and eighty per cent. of canal freights, are moved from west to east. These facts should induce us to give every possible facility to the vast and growing commerce of the Western States, mainly dependent upon them as we are for the immense through traffic which constitutes so large a share of our carrying trade, and forms a most important source of our commercial greatness, affording at the same time one of the many reasons for cultivating the most enduring relationships with that section.

The obstructions in the channel of the Hudson river severely impair the usefulness of our canals. Their increased capacity has led to the building of boats of greater draft than formerly. These are towed through to New York without change of freight; and after the spring freshets it is not unusual for them to get aground in the river after passing through the canals without difficulty. Suitable measures should at once be taken for the removal of these obstacles.[5]

The aggregate valuations of real and personal property of the State for 1862, is $1,449,303,948. This exceeds the previous year by $7,536,515, although the valuations in the cities of New York and Brooklyn were reduced about fifty million dollars.

The State tax of last year was at the rate of four mills and three-fourths on each dollar of the taxable property. According to the estimates of the Comptroller, less than one-half of that rate will be sufficient for the present year, unless some extraordinary appropriations shall be made by the Legislature.

In July last, the President called for three hundred

[5] Chapter 122, passed April 13, appropriated $100,000 for removing obstructions to and improving the navigation of the Hudson river, between the city of Troy and the village of New Baltimore. The act appointed commissioners to superintend the proposed improvements. The commissioners were directed to request the general government to reimburse the State for expenditures under the act.

thousand volunteers, and subsequently ordered a draft for an equal additional number. The quota of the State, under both calls, was about one hundred and twenty thousand men. The exigencies of the service demanded that these troops should be raised with the greatest despatch. It was the season of harvest, when labor commanded high prices. The State has so promptly responded to former requisitions of the Government by voluntary offers, that a strong aversion existed in the public mind toward compulsory measures. It was believed that if suitable bounties were offered, a conscription could be avoided. But no payment could be made from the State Treasury without legislative authority. To obtain this, an extra session, involving both delay and expense, was necessary. The Commercial Bank of Albany offered to advance the requisite sum for bounties, and to assume the risk of reimbursement by the Legislature at its annual session. Their offer was accepted, and a suitable arrangement at once made. My predecessor immediately issued his proclamation, offering a State bounty of fifty dollars to each private soldier who should thereafter volunteer into the service of the United States. The moneys thus advanced were disbursed by the Paymaster-General of the State. The annual report of the Comptroller will present the details. As the State tax levied under authority of chapter 456 of the laws of 1862, for the payment to the United States of the direct tax levied by the act of Congress of the preceding August, will not be required, the proceeds will remain in the treasury, and may be appropriately applied to the repayment of the moneys thus advanced. I therefore recommend that a law making the requisite appropriation, and ratifying the action of the Governor in this respect, be passed, and I cheerfully record my approval of the course pursued in respect to this matter.[6] In addition to the bounty offered by the State,

[6] Chapter 14, passed February 21, confirmed Governor Morgan's action in offering bounties as described by Governor Seymour, and appropriated $3,000.00 to pay the bounties to volunteers offered by the proclamation of

in various localities large sums were voted as additional premiums to volunteers, and I recommend the passage of suitable laws providing for the collection of these self-imposed obligations.[7]

The population of this State in 1860 was 3,880,728. The number of men returned by the enrolling officers, as liable to military duty, is 764,603. The number between the ages of 18 and 45 returned as exempt from various causes, is 139,198. Since the beginning of the present war the State of New York has sent to the field 222,836. The number from this State now in the field is estimated at 125,000, showing a total waste since the beginning of the war of 97,836, being an annual waste of about 33 per centum of the whole number, equal to 42,000 per year. To fill the quota of this State under the calls, 30,788 more volunteers are required, unless the General Government will give the State credit for the proportional excess sent to the field before July 2, 1862.

I urge your immediate attention to the inequality and injustice of the laws under which it is proposed to draft soldiers for the service of the General Government; during a long period of peace, but little attention has been paid to our military system. For the purposes of a conscription it is entirely defective; it contains none of the provisions which in the European systems mitigate the evils of compulsory military service; it pays no just regard, on one

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the Governor of this State of July 17, 1862, regulated by his general order (as commander-in-chief) No. 59, and limited and terminated by his proclamations of date of August 30 and September 24, 1862. The act also provided for reimbursing the Commercial Bank of Albany for advances made by it to supply funds for the payment of bounties under the Governor's proclamation.

[7] Chapter 15, passed February 21, authorized the levying of a tax upon the taxable property of the different counties, cities and towns in this State, to repay moneys borowed for, or expended in, the payment of bounties to volunteers, or for the expenses of their enlistments, or for aid to their families, or to pay any liability incurred therefor. The act was sustained in Jones v. Chamberlain (1888), 109 N. Y. 100.

hand, to the evils which it may inflict, while on the other it makes numerous exemptions which are inconsistent with fairness and with the spirit of our Constitution. That contemplates that all of suitable ages alike shall perform military duty or pay some equivalent.[b] This purpose is fully expressed by the first Constitution of our State:

"It is of the utmost importance to the safety of every State that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society to be prepared and willing to defend it."[c]

The present Constitution has a provision to the same effect. Not only the organic law of our State, but justice demands that every man who enjoys the protection of society should be prepared to defend it. Recent legislation on this subject has departed widely from this principle; no conditions have been prescribed upon which those who have scruples of conscience should be excused from bearing arms. Exemptions have been multiplied until large classes are not only relieved from military duty, but also from giving any equivalent for such relief. They include numerous officials and other classes who have no claims to exemption beyond those which belong to every citizen engaged in useful pursuits.

These favored classes are usually in a better condition to give an equivalent than the mass of those upon whom these liabilities now fall. There should be no such unjust distinctions; all male citizens of suitable years, should be equally liable; if those who are unfit to perform duty are drawn, they should pay such sum as shall be deemed just by suitable tribunals. If they are unable to pay, the amount can be remitted, or like firemen, they might render an equivalent in an equally honorable branch of the public service. If the lot falls on officials, they can procure substitutes or pay such commutations as may be prescribed by law.

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[b] Const. 1846, art. 11, § 1.

[c] Const. 1777, § 40.

It is glaringly unjust to allow those enjoying the honors and profits of official station to go free of all liabilities, while the only son of the widow, or the sole support of the family, may be forced upon a distant and dangerous service. I also commend to your attention such other provisions as exist in European countries to mitigate the evils which a forced conscription involves, and which have been suggested by experience in their long and frequent wars.

The military system adopted at the last session of the Legislature, cannot be perfected in time to meet the probable calls made by the General Government; an attempt to make a draft upon the present enrollment has been found to involve difficulties and danger of the most serious character, and as such draft has therefore been necessarily postponed, this subject demands your immediate attention.[8]

The amounts due to the soldiers of the war of 1812 from

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8 The Legislature in April, adopted the following concurrent resolutions:

"*Whereas*, By the late act of Congress, providing for the enrollment of the national forces of the United States, the President is authorized to assign to each congressional district the number of men to be furnished by each district for the military service of the United States, and it being understood that preparations are now being made for assigning to the several districts of the loyal States their respective quotas of men, to be drafted into the service in pursuance of said act; *and whereas*, in obedience to the calls made by the President in the year eighteen hundred and sixty-two for an aggregate of six hundred thousand men, the State of New York nearly filled her entire quotas under said calls by men enlisted for three years, whilst other States filled their respective quotas, in whole or in part, by men enlisted for only nine months and whose terms of service are now about expiring, therefore,

Resolved, First. That the State of New York is justly entitled to credit for the large number of three years' men furnished under the calls of eighteen hundred and sixty-two, and that in assigning to the several States, or the congressional districts composing the same, their respective quotas, to be drafted into the service under the late act of Congress, the President ought to take the above facts into account and make the quota or quotas of the State of New York less than those of the States so furnishing men under the calls of eighteen hundred and sixty-two for only nine months.

Second. That the Governor of this State be requested to communicate with the President of the United States, or the War Department, on the above subject, and to secure, if possible, a just credit to this State in the arrangement of the new quotas, on account of the large number of three years' men furnished under the calls of eighteen hundred and sixty-two as compared with other States, and also of men enlisted from this State in the navy."

Chapter 425, approved May 5, amended existing laws as to the enrollment and organization of the militia.

the Government of the United States, have been ascertained by the proper Commissioners appointed by the State, to be $877,628. I recommend that some measures be taken to secure the immediate payment of the amounts due to the several claimants.[9]

NATIONAL AFFAIRS.

The Constitution makes it my duty to communicate to you the condition of the State.[d] I cannot do this without speaking of our Union and of the war which afflicts our country, and which also affects the extended commerce of New York; taxes all its pursuits; has taken more than 200,000 men from our workshops and fields; and has carried mourning into the homes of our citizens. The genius of our government, and the interests of our people demand that the aspects of this war should be discussed with entire freedom. Not only is the National life at stake, but every personal, every family, every sacred interest is involved. We must grapple with the great questions of the day; we must confront the dangers of our position. The truths of our financial and military situation must not be kept back. There must be no attempt to put down the full expression of public opinion. It must be known and heeded, to enable government to manage public affairs with success. There is a yearning desire among our people to learn their actual condition. They demand free discussion. This should be conducted in an earnest, thoughtful, patriotic spirit. The solemnity of the occasion, and the sufferings of the war, should reanimate the virtue, the intelligence, and the patriotism of the American people. The decay of these have

[9] The Legislature in April adopted a concurrent resolution requesting New York senators and representatives in Congress to procure legislation to obtain from the United States the money required to pay the claims of the several persons which have been audited and found due for contingent expenses of the militia of the State of New York in the late war with Great Britain in 1812.

[d] Const. 1846, art. 4, § 4.

brought our calamities upon us. There are now no causes for discord, that have not always existed in our country, and which were not felt by our Fathers in forming the Union. They had the greatness, the magnanimity and virtue to compromise and adjust them. The value of the Union they then formed has proved to be greater than they hoped.

Yet we became indifferent to it when we were in the full enjoyment of its blessings. We became forgetful of the character and resources of our own countrymen, while we had the full benefit of an untrammeled commerce with all sections of our land. It was when the world was astonished with the power and wealth growing out of our National Union, that sectional prejudices and passions were active in destroying fraternal affections and generous love of our country. While we boasted most of our intelligence, there were those persistently and laboriously engaged through the press, and in legislative halls, in teaching the people of the North and the South to undervalue and despise each other. Hostile legislation and the division of our churches impaired religious and social intercourse. If the North and the South had understood the power and purposes of each other, our contentions would have been adjusted. This misapprehension, so bloody and terrible in its effects, was systematically and laboriously inculcated.

CAUSES OF THE WAR.

Affrighted at the ruin they have wrought, the authors of our calamities at the North and South insist that this war was caused by an unavoidable contest about slavery. This has been the subject, not the cause of controversy. We are to look for the causes of this war in a pervading disregard of the obligations of laws and constitutions; in disrespect for constituted authorities; and, above all, in the local prejudices which have grown up in two portions of the Atlantic States, the two extremes of our country,

whose remote positions have made them less well-informed, and whose interests have made them less considerate, with regard to the condition and character of our whole people, than those living in the great central and western sections of our Union. There is no honest statement of our difficulties which does not teach that our people must reform themselves, as well as the conduct of the government and the policy of our rulers. There is not a calamity we are suffering which was not clearly foretold by our Fathers, as the result of the passions and local prejudices that have grown up during the past fifteen years.

It is not too late to save our country if we will enter upon the sacred duty in the right spirit and in the right way. When we do so, the effect will be seen and felt throughout our land and by the civilized world. We shall then strengthen our Government; we shall weaken the rebellion; we shall unite our people; and the world will recognize our capacity for self-government, when we show that we are capable of self-reform.

RESPECT FOR LAWS AND RULERS.

In the first place we must emulate the conduct of our Fathers and show obedience to constituted authorities, and respect for legal and constitutional obligations. "The very idea of the power and right of the people to establish Government, presupposes the duty of every individual to obey the established Government." Yet a spirit of disobedience has sapped the foundations of Municipal, State and National authority in every part of our land. It is not only the underlying and pervading cause of the war; it is also the immediate occasion of our calamities.

When the leaders of the insurrection at the extreme South say that Free and Slave States cannot exist together in the Union, and when this is echoed from the extreme North by the enemies of our Constitution, both parties say they cannot, simply because they will not, respect the laws

and the Constitution. This spirit of disloyalty must be put down. It is inconsistent with all social order and social security; with safety of persons and property.

In order to uphold our Government, it is also necessary that we should show respect to the authority of our rulers. While acting within the limits of their jurisdictions, and representing the interests, the honor, and the dignity of our people, they are entitled to deference. Where it is their right to decide upon measures and policy, it is our duty to obey and to give a ready support to their decisions. This is a vital maxim of liberty. Without this loyalty, no Government can conduct public affairs with success, no people can be safe in the enjoyment of their rights. This duty is peculiarly strong under our system, which gives the people the right at their elections to sit in judgment upon their rulers, to commend or condemn them, to keep them in, or expel them from official stations.

This war should have been averted; but when its floodgates were opened, the Administration could not grasp its dimensions nor control its sweep. Government was borne along by the current, and struggled as it best could with the resistless tide. Few seemed able to comprehend its military or financial problems. Hence we are not to sit in harsh judgment upon errors in conduct or policy. But while we concede all these excuses for mistakes, we are not to adopt errors, nor sanction violations of principle. The same causes which extenuate their faults in judgment, must make us more vigilant to guard against their influences. Unusual dangers demand unusual vigilance.

Economy and Integrity.

Economy and integrity in the administration of affairs are essential at all times; they are vital in periods of war. If the power of the People to sustain the expenses of war is broken down, it is vain that we have sent our citizens into the field, and that they have shed their blood in unsupported efforts to save our country.

The opportunities which a state of war gives to unprincipled men to prey upon the public treasury, and the difficulty of checking their schemes, must be borne in mind, when we judge the integrity of our rulers. But while these difficulties should shield them from harsh judgment, they are additional reasons for vigilance and caution. It is in the nature of war to create powerful financial and ambitious interests, eager to prolong its duration. It is one of its chief dangers that it builds up an active class who gain power and wealth by the taxation imposed upon the labor and property of the mass of citizens. This organized class use the National treasury to support schemes of plunder or ambition, and the taxes wrung from the people are thus made to prolong the state of war, and military government. The power of our rulers to avert these influences must be aided and strengthened by the most ample exposition of financial affairs.

Extravagance and corruption are violations of the faith pledged to the public creditors. The money loaned to the National treasury was not brought forward at a time of peace and confidence, but in a time of doubt and danger. These claims are held by the rich and poor. The amounts owned by corporations represent the interests of women and children, the aged and infirm. The right of our soldiers to demand economy and integrity is of the most sacred character. Never in the history of the world have armies of such numbers been made up of those who voluntarily left prosperous pursuits and happy homes to suffer the dangers and privations of war. When defeat or destruction of life by violence or disease thinned the ranks of our armies, they promptly and freely stepped forward to the rescue of the country's flag. A fearful crime will be done by those who shall suffer National bankruptcy to turn into dust and ashes the pensions and bounties thus gained at the cost of blood and health and exposure. These pensions will, in many cases, be the sole reliance of those thus made incapable of self-support.

It is worse that a government should be overturned by corruption than by violence. A virtuous people will regain their rights if torn from them, but there is no hope for those who suffer corruption to sap and rot away the fabric of their freedom.

LIMITATIONS OF POWER.

There are not only obligations resting upon our people toward our authorities, but under our political system, there are limitations between the departments of the government, and between the State and National Governments, which must be observed to secure the public safety. At this time these warning words of Washington have peculiar significance:

"It is important, likewise, that the habits of thinking in a free country, should inspire caution in those interested with its administration, to confine themselves within their respective constitutional spheres; avoiding in the exercise of the powers of one department, to encroach upon the other. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position."

The Legislative, Executive and Judicial Departments are co-ordinate. It is equally treasonable to resist the rightful authority of either. To overthrow the power of either department is revolution. Legislative right, Executive power, and Judicial independence are alike sacred. Disregard for the limits of State and National jurisdictions, and the interference of one department with the duties of another, are not only opposed to the genius and organic structure of our civil government, but they have caused disasters in the conduct of the war.

While the War Department sets aside the authority of

the Judiciary, and overrides the laws of States, the Governors of States meet to shape the policy of the General Government, the National Legislature appoints committees to interfere with the military conduct of the war, and Senators combine to dictate the Executive choice of constitutional advisers. The natural results of meddling and intrigue have followed. While our armies have gained victories in fields remote from the capital, within its influence the heroic valor of our soldiers and the skill of our generals are thwarted and paralyzed.

STATE RIGHTS.

Not only must the National Constitution be held inviolate, but the rights of States must be respected as not less sacred. There are differences of opinion as to the dividing line between State and National jurisdictions, but there can be none as to the existence of such separate jurisdictions, each covering subjects of legislation and jurisprudence essential to the public security and welfare. A consolidated government in this vast country would destroy the essential home-rights and liberties of the people. The sovereignties of the States, except as they are limited by the Constitution, can never be given up. Without them our Government cannot stand. It was made and it can be changed by State agency. This is shown by the following provisions of the instrument itself.

"The ratification of the conventions of nine States shall be sufficient to the establishment of this Constitution between the States so ratifying the same."[e]

Again, three fourths of the States can add to or take away from the powers of the General Government, by demanding a convention in which amendments can be proposed, which, if ratified by three fourths of the States, become parts of the Constitution.[f]

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[e] U. S. Const. art. 7, § 1.

[f] U. S. Const. art. 5, § 1.

While they can thus take away or add to its power the General Government can in no way touch one right of the States, or invade their jurisdiction.

The obligations which rest upon the States to respect the Constitution, laws and authorities of the General Government, also demand that the General Government shall show equal respect for the rights and constituted authorities of States.

To State legislation and authorities, we look for the good order of society, the security of life and property, the protection of our homes and all that is nearest and dearest to us in the relations, duties and actions of life. It is dangerous and demoralizing to show contempt for State authorities and laws. It undermines alike the foundations of State and National Government by breaking up the social system. If home laws are not respected, the more general authority will not be regarded.

ARBITRARY ARRESTS.

Our people have, therefore, viewed with alarm, practices and pretensions on the part of officials, which violate every principle of good order, of civil liberty, and of constitutional law. It is claimed that in time of war the President has powers, as Commander-in-Chief of our armies, which authorize him to declare martial law, not only within the sphere of hostile movements, where other law cannot be enforced, but also over our whole land. That at his pleasure he can disregard not only the statutes of Congress, but the decisions of the National judiciary. That in loyal States the least intelligent class of officials may be clothed with power not only to act as spies and informers, but also, without due process of law, to seize and imprison our citizens, and carry them beyond the limits of the State, to hold them in prisons without a hearing or a knowledge of the offences with which they are charged. Not only the passions and prejudices of these inferior agents lead them to

acts of tyranny, but their interests are advanced and their positions secured by promoting discontent and discord. Even to ask the aid of counsel has been held to be an offence. It has been well said that "to be arrested for one knows not what; to be confined, no one entitled to ask where; to be tried, no one can say when, by a law nowhere known or established; or to linger out life in a cell without trial, presents a body of tyranny which cannot be enlarged."

The suppression of journals and the imprisonment of persons have been glaringly partisan, allowing to some the utmost licentiousness of criticism, and punishing others for a fair exercise of the right of discussion. Conscious of these gross abuses, an attempt has been made to shield the violators of law and suppress enquiry into their motives and conduct. This attempt will fail. Unconstitutional acts cannot be shielded by unconstitutional laws. Such attempts will not save the guilty, while they will bring a just condemnation upon those who try to pervert the powers of legislation to the purposes of oppression. To justify such action by precedents drawn from the practice of governments where there is no restraint upon legislative power, will be of no avail under our system, which restrains the Government and protects the citizen by written constitutions.

I shall not inquire what rights States in rebellion have forfeited, but I deny that this rebellion can suspend a single right of the citizens of loyal States. I denounce the doctrine that civil war in the South takes away from the loyal North the benefits of one principle of civil liberty.

It is a high crime to abduct a citizen of this State. It is made my duty by the Constitution to see that the laws are enforced.* I shall investigate every alleged violation of our statutes, and see that offenders are brought to justice. Sheriffs and district attorneys are admonished

* Const. 1846, art. 4, § 4.

that it is their duty to take care that no person within their respective counties is imprisoned, or carried by force beyond their limits, without due process of legal authority. The removal to England of persons charged with offence, away from their friends, their witnesses and means of defence, was one of the acts of tyranny for which we asserted our independence. The abduction of citizens from this State, for offences charged to have been done here, and carrying them many hundred miles to distant prisons in other States or Territories, is an outrage of the same character upon every principle of right and justice.

The General Government has ample powers to establish courts, to appoint officers to arrest, and commissioners to hear complaints, and to imprison upon reasonable grounds of suspicion. It has a judicial system, in full and undisturbed operation. Its own courts, held at convenient points in this and other loyal States, are open for the hearing of all complaints. If its laws are not ample for the punishment of offences, it is due to the neglect of those in power.

Government is not strengthened by the exercise of doubtful powers, but by a wise and energetic exertion of those which are incontestable. The former course never fails to produce discord, suspicion and distrust, while the latter inspires respect and confidence.

This loyal State, whose laws, whose courts, and whose officers have thus been treated with marked and public contempt, and whose social order and sacred rights have been violated, was at the very time sending forth great armies to protect the National Capital, and to save the national officials from flight or capture. It was while the arms of New York thus sheltered them against rebellion, that, without consultation with its chief magistrate, a subordinate department at Washington insulted our people and invaded our rights. Against these wrongs and outrages the people of the State of New York, at its late election, solemnly protested.

The submission of our people to these abuses, for a time only, was mistaken at home and abroad for an indifference to their liberties. But it was only in a spirit of respect for our institutions, that they waited until they could express their will in the manner pointed out by our laws. At the late election they vindicated at once their regard for law and their love of liberty. Amidst all the confusion of civil war, they calmly sat in judgment upon the administration, voting against its candidates. Nor was this the only striking proof of respect for the Constitution. The minority, of nearly equal numbers, yielded to this decision without resistance, although the canvass was animated by strong partisan excitements. This calm assertion of rights, and this honorable submission to the verdict of the ballot box, vindicated at once the character of our people and the stability of our institutions. Had the secessionists of the South thus yielded to constitutional decisions, they would have saved themselves and our country from the horrors of this war, and they would have found the same remedy for every wrong and danger.

MARTIAL LAW.

The claim of power under martial law is not only destructive of the right of States, but it overthrows the legislative and judicial departments of the General Government. It asserts for the President more power as the head of the army, than as a representative ruler of the people. This claim has brought discredit upon us in the eyes of the world. It has strengthened the hopes of rebellion. It has weakened the confidence of loyal States; it tends to destroy the value of our Government in the minds of our people. It leads to discord and discontent at the North, while it has united and invigorated the South.

If there is a necessity which justifies that policy, let us openly and honestly say there is a necessity which justifies a revolution. But this pretension is not put forth as a

necessity which overleaps for a time all restraints, and which is justified by a great exigency; it is a theory which exalts the military power of the President above his civil and constitutional rights. It asserts that he may, in his discretion, declare war, and then extinguish the State and National Constitutions by drawing the pall of martial law over our vast country.

"Martial law" defines itself to be a law where war is. It limits its own jurisdiction by its very term. But this new and strange doctrine holds that the loyal North lost their constitutional rights when the South rebelled, and all are now governed by a military dictation. Loyalty is thus less secure than rebellion, for it stands without means to resist outrages or to resent tyranny. Amidst all the horrors that have been enacted under martial law in the history of the world, and amidst all the justifications attempted of its usages, it was never before held that it could be extended over peaceful States. It was never before claimed that the power of a military commander was superior to the powers of government.

More than two centuries since, that bold defender of English liberty, that honest and independent judge, Lord Coke, declared: "Where courts of law are open, martial law cannot be executed," and also that "the power that is above the law, is unfit for the King to ask or us to grant." Are English laws more sacred, or is English liberty more secure than ours?

It was one of the causes set forth in the Declaration of Independence, for renouncing allegiance to the King of England, "that he has affected to render the military independent of, and superior to the civil power." During the struggle for national life, although surrounded by enemies, spies and informers, who upheld the pretensions of the crown, Washington never declared martial law, or claimed the right, under any circumstances, to make the military superior to the civil authority. On the contrary,

he was most deferential to the latter. The feeling of the fathers on this subject, can best be learned by the Constitutions, which were formed by the men who established our National Government; all of them had provisions inconsistent with this new and monstrous pretension.

Massachusetts, New Hampshire, Connecticut, Delaware, Pennsylvania, Maryland, North Carolina and South Carolina, eight of the twelve States which originally made up our Union, explicitly declared that the military power should, in all cases and at all times, be held in exact subordination to the civil authority, and be governed by it; this was expressed in each Constitution, in terms almost identical. It is incredible that a people who held these views, and who were jealous of their liberties, and who thus restrained State authorities under their immediate control, would give to the commander of the army of the United States this despotic power; a power which the crown of Great Britain has not been permitted to exercise for nearly two centuries.

The measure of power to be exercised under our government is fixed by the Constitution. To make the maxims of other governments or the usages of other nations the rule here, would give sanction to every outrage, tyranny and wrong. It would undo what was done by our fathers who formed our government; it makes the practices of despotism or the principles of monarchy higher authorities than the written Constitution of our Republic. The unlimited, uncontrolled despotic power claimed under martial law is of itself a reason why it cannot be admitted. The fact that it is inconsistent with the purposes, spirit, and genius of our institutions, is conclusive against the claim set up for its control over an extent of country and a diversity of interests which never existed in the despotisms or monarchical governments from which the precedents are drawn to justify it.

New York and other States consented to make up the

General Government only upon the assurance that the original Constitution should be so amended as to secure more perfectly the rights of States and citizens. These articles were added by the unanimous vote of the States:

ARTICLE 4. "*The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. And no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.*"

ARTICLE 5. "*No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; . . . . nor be deprived of life, liberty or property without due process of law.*"

The want of these restraints in the original instrument endangered its adoption. They were inserted to satisfy the public demand. We are now told that they are of no avail, in any part of our country, when the Executive shall see fit to declare there is war or insurrection in any section of this land.

Such pretensions are in contradiction to the plain language of these clauses, and to their settled legal effect. If any differences of construction be possible, our Constitution provides for their determination. These questions will be carried before the proper judicial tribunals. If the theory of martial law is upheld by them, we will submit, and have the Constitution amended. If it is held to be unfounded, it must be given up.

So sacred did our fathers hold constitutional rights, that they placed them beyond the reach even of the majority of our people. Written constitutions are made not only to carry out the wishes, but also to restrain the power of majorities, and to uphold and protect the rights of

minorities. They give the humblest citizen the right of religious freedom against the whole power of our people. No matter how large a majority may be, it must not interfere with rights of persons, of property, or of conscience.

The President himself holds his place not by the will of the majority, but by virtue of the provisions of the Constitution, which placed him in his office by the votes of about 1,800,000 against the votes of about 2,800,000, who did not agree among themselves as to opposing candidates. He continues rightfully to hold his office, although popular majorities, even in the State which placed him there, have, in the recent elections, declared themselves politically opposed to his administration. The majority are still bound to respect his constitutional rights, to uphold his powers, and to sustain his acts done within the limits of rightful authority.

The rights of States were reserved, and the powers of the General Government were limited, to protect the people in their persons, property and consciences, in times of danger and civil commotion. There is little to fear in periods of peace and prosperity. If we are not protected when there are popular excitements and convulsions, our government is a failure. If Presidential proclamations are above the decisions of the courts and the restraints of the Constitution, then that Constitution is a mockery. If it has not the authority to keep the Executive within its restraints then it cannot retain States within the Union. Those who hold that there is no sanctity in the Constitution must equally hold that there is no guilt in the rebellion.

We cannot be silent and allow these practices to become precedents. They are as much in violation of our Constitution as the rebellion itself, and more dangerous to our liberties. They hold out to the Executive every temptation of ambition to make and prolong war. They offer despotic power as a price for preventing peace. They are inducements to each administration to produce discord and

incite armed resistance to law, by declaring that the condition of war removes all constitutional restraints. They call about the National Capital hordes of unprincipled men, who find in the wreck of their country the opportunity to gratify avarice or ambition, or personal or political resentments. This theory makes the passion and ambition of an administration antagonistic to the interest and happiness of the people. It makes the restoration of peace the abdication of more than regal authority in the hands of those to whom is confided the government of our country.

Of the same nature is the recent proclamation of general emancipation in certain States and districts. The President had already signed an act of Congress, which asserts that the slaves of those in rebellion are confiscate. The sole effect of this proclamation, therefore, is to declare the emancipation of slaves of those who are not in rebellion, and who are, therefore, loyal citizens. It is an extraordinary deduction from the alleged war power, that the forfeiture of the right of loyal citizens, and bringing upon them the same punishment imposed upon insurgents, is calculated to advance the success of the war, to uphold the Constitution and restore the Union. The class of loyal citizens who above all others, are entitled to the protection of the Government, are those who, in the region of the civil war, have remained true to the flag of our country. And yet the sole force of this proclamation is directed against them. May not this measure, so clearly impolitic, unjust and unconstitutional, and which is calculated to create so many barriers to the restoration of the Union, be misconstrued by the world as an abandonment of the hope or the purpose of restoring it — a result to which the State of New York is unalterably opposed, and which will be effectually resisted?

We must not only support the Constitution of the United States and maintain the rights of the States, but we must restore our Union as it was before the outbreak of the war.

The assertion that this war was the unavoidable result of slavery is not only erroneous, but it has led to a disastrous policy in its prosecution. The opinion that slavery must be abolished to restore our Union, creates an antagonism between the Free and Slave States which ought not to exist. If it is true that slavery must be abolished by the force of the Federal Government; that the South must be held in military subjection; that four millions of negroes must for many years, be under the direct management of authorities at Washington at the public expense; then, indeed, we must endure the waste of our armies in the field, farther drains upon our population, and still greater burdens of debt. We must convert our government into a military despotism. The mischievous opinion that in this contest the North must subjugate and destroy the South to save our Union, has weakened the hopes of our citizens at home and destroyed confidence in our success abroad.

THE CENTRAL AND WESTERN STATES.

It is a suggestive fact, affording instruction and hope for the future, that the theories which have exercised an evil influence on our National politics, did not originate in what may be called the heart of the Union, among the intimate and well-acquainted populations of the Central and Western States, where the States permitting and forbidding slavery are in actual contact, nor in the portions traversed by the great east and west lines of commerce and intercourse. They have been developed almost entirely in two sections comparatively isolated by position, traditions, and peculiar habits of thought, and least connected with the more homogeneous mass of our people. There have been extreme Northern views and extreme Southern views; but also the broader and more tolerant views of the more populous Central and Western States. These extend on both sides of that indenturing boundary between

"slave" and "free" States, which is not a line of opposing opinions, but of intermingling interests. Their plains are interlocked by confluent rivers, and not divided by mountain ranges. These States are a region of harmonizing views and sympathies. They are not only bound together by peculiar interests, but also by strong reasons for resisting a division on that boundary, which would make them frontier States, which would replace their cordial intercourse by hostile relationships, and throw upon them all the greatest and sharpest evils of the separation. Thus, while they do not share the passions and prejudices of those extreme States which strove to enlist them in the contest, they have motives of the highest interest to restore the old order of things, and of the gravest apprehension from a separation. This war blights and destroys the hopes and the happiness of this region, while the sections whose passions and interests kindled it are mainly remote from the terrible suffering it has caused.

The Western and Central States enlisted warmly in a war for the Union and the Constitution. The northern tier of "Slave States" (except Eastern Virginia) earnestly supported the Government in its policy while it was consistent with this purpose, which was known as the "Border State Policy." Both the administration and Congress then declared their sole purpose to be to restore the Union and maintain the Constitution. When the Administration abandoned this policy, and took up the views of extreme Northern States, it lost, at the late election, nearly all the political support which the Central and Western States afforded in the elections of 1860 and 1861.

While the North cannot hold the Southern States in subjection without destroying the principles of our Government, the great Central and Western States can control the two extremes. They will not accept the views of either as safe guides in the conduct of public affairs. This is shown by the political history of our country during the

past four years. When it was believed that the late Administration was controlled by the views of the Gulf States, it lost its power in the Central and Western region. The opposing party, to gain public support, were obliged, by assurances and resolutions, to repel the charge that they would interfere with slavery in the States, and they denounced, as unjust, the imputation that they held the views of the abolitionists of the extreme northern section. Without these pledges they could not have gained political power.

When the Gulf States seceded, the central Slave States, by large majorities, refused to act with them. They sought to avoid war and division by the peace conference held in Washington. Unfortunately the dominant leaders of the party which had succeeded at the election of 1860, overlooking the fact that this was done by the vote of 1,800,000 against a divided opposition of about 2,800,000, rejected all terms of compromise and conciliation as inconsistent with the results of the election, and attempted to govern and control an agitated and convulsed country strictly by the opinions and sentiments of a minority.

The outbreak of war involved our whole country in its excitements. The States of Delaware, Maryland, Kentucky, and Missouri, and the western part of Virginia, adhered to the Union. The purpose then avowed by the Administration and asserted by Congress, as to the objects of the war, gave to the Administration overwhelming majorities at the election of 1861, in all the loyal States. All engaged hopefully and unitedly in the work of upholding our Constitution and of restoring our Union to its former condition. When this policy was changed, and it adopted the sentiments of the extreme Northern States, and discarded those of the Central and Western States, a remarkable political revolution was the result.

Extremes Will Not Prevail.

It has been assumed that this war will end in the ascendancy of the views of one or the other of the extremes of our country. Neither will prevail; for neither can command the support of the majority of the American people. The great Central and Western States, which have the largest share of the population and resources of our country, will not accept of either class of purposes. This is the significance of the late elections. Their determination is to defend the rights of States, and the rights of individuals, and to restore our Union as it was. It will be restored by the Central and Western States, both free and slave, who are exempt from the violent passions which bear control at the extremes. It is a fact full of hope that the prejudices between Northern and Southern States are not held on the line of contact, but in the sections most remote from each other, and separated by the great controlling regions and resources of the country. Those of the Central Slave States which rejected the ordinance of secession, which sought to remain in the Union, and which were driven off by a contemptuous, uncompromising policy, must be brought back. The restoration of the whole Union will then be only the work of time, with such exertion of power as can be put forth without needlessly sacrificing the life and treasure of the North in a bloody and calamitous contest. We must not wear out the lives of our soldiers, nor exhaust the earnings of labor, by a war for uncertain ends, or to carry out vague theories. The policy of subjugation and extermination means, not only the destruction of the lives and property of the South, but also the waste of the blood and treasure of the North. The exertion of armed power must be accompanied by a firm and conciliatory policy, to restore our Union with the least possible injury to either section.

To make this Union, New York gave up a vast and rightful political power in the Senate. It has proved a greater

blessing than the most hopeful expected. To save it we have made great sacrifices of blood and treasure. Is it not also worth a sacrifice of passion? Shall we let it be torn to fragments without one conciliatory effort to preserve it?

ADJUSTMENTS OF INTERESTS, &C.

Those at the North and the South who have been laboring to break down our National Constitution and Union, and to make two confederacies, overlook the fact that in each of these it would be more difficult to adjust conflicting interests, and State representation, than in our existing Union. The vast extent of our country, and its varied productions and pursuits, have relieved antagonism between commercial, manufacturing and agricultural interests. They give to each great fields for prosperous pursuits. If the producing States of the West are cut off from the markets of the South, they will demand a free trade policy which will open to them the markets of the world; and even these will not make good the loss. They will not give up their peculiar advantages of raising grain and cattle for other pursuits, and the markets of the Eastern States and Europe are not equal to western productions. The past two years have shown this. With an unusual European call for breadstuffs and provisions, with a vast consumption of these articles by our American armies, there is a great section of the West where the prices do not pay for their production. There is bankruptcy and financial distress in the midst of abundant harvests; and a waste of ungathered grain, at a time of the largest exportation of agricultural products known in the history of our country. Reducing the cost of carrying these products will not cure this trouble. Opening the Mississippi, as a way to the markets of the world, will not overcome this evil.

The cotton raised on the Mississippi is the joint product of the provisions of the North and the labor of the South.

The people of the West must have the markets of the Southwestern States to bring back their prosperity. They must be reunited, politically, socially, and commercially, to the valley of the lower Mississippi. Their grain and provisions must be converted into cotton, and in this form carried profitably to the Eastern and European ports. When they have thus gained the returns for their labor, they will once more become the supporters of our commerce. To restore this great region to its former prosperity, and to regain for ourselves its enriching trade, the lower valley of the Mississippi must be brought back into the Union; it must be brought back too with all its elements of production and wealth unimpaired, with all the advantages of local self government; not a devastated and ruined territory, under a blighting, debasing military control.

So closely are the upper and the lower valleys of the Mississippi bound together by interest that when cotton is burned in Louisiana, Indian corn is used as fuel in Illinois. The ruin of the Southern consumer brings bankruptcy upon the Northern producer. When the capacity of the one to buy is annihilated, the ability of the other to produce is weakened or destroyed. This single instance, from many equally strong, shows that neither in a Northern or Southern Union can the conflicting interests of agriculture, commerce and manufactures be adjusted.

POLITICAL INTERESTS, &C.

The division of our Union into two or more confederacies would re-open in each those questions of distribution of power and relationship between States, which were settled by our National Constitution. Even now, the centralization of power and patronage at the National Capital causes uneasiness in those States which now are, or will soon become, the most populous. The Senate can prevent the passage or repeal of laws by the House, which represents

the popular will, and, at the same time, can control the power of the Executive by rejecting treaties formed or nominations made by the President.* At this time, it assumes to dictate the organization of the Executive Department. This body, also, has the advantage of longer tenure of office, while it is farther removed from popular control. It is in this powerful branch of government that States have an equal representation, without regard to population.

Even under our present Union, it is for the interest of the small States to centralize power in the National Government, as they enjoy a disproportionate control in the most influential branch of that government. All now acquiesce in that compromise of the Constitution. It is the best adjustment which can be made between the larger and smaller States.

So long as all the States of our present Union were represented in Congress, this tendency was checked by the existence of States with small populations, distributed in different sections of our country, and somewhat equally among the agricultural, commercial, and manufacturing regions. Hitherto, no injurious or irritating results have been caused. A division of the Union, or the disfranchisement of the Southern States by putting them back into the condition of mere territories, or a representation dictated by the military power of Government, would make inevitable a re-adjustment of political power. If the Southern States are cut off or disfranchised, every map of our country will constantly suggest this to the public mind. In the Northern Union, the group of six small New England States, with New Jersey and Delaware lying on the Atlantic coast, far removed from the central and western sections of our country, with united populations only about equal to that of this State, would balance, in the controlling

* U. S. Const. art. 2, § 2, clause 2.

branch of the National Legislature, the great producing States of New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin and Iowa. In a few years, each of these States will have populations greater than that of all New England. This disparity of political power would be increased by the fact that the population and pursuits of New England, confined within very limited boundaries, have the uniformity of one community, while the larger States have diversified and distinctive pursuits to prevent them from acting so readily in concert.

The danger of controversy would be increased by our vast National debt. This mainly held by a few Atlantic States, divides our country into the perilous sectional relations of debtor and creditor regions. The ownership of this debt cannot be diffused over our country so that the same communities which pay taxes will receive incomes. The incidental advantages of protective tariffs growing out of this debt, would be largely gained by the creditor States, which also enjoy this disproportionate share of political power. The great producing States would be compelled to pay a heavy taxation to other communities at a time when the division of our Union would deprive them of their most profitable markets; and heavy duties would tend to diminish the demands of foreign countries for their productions. No one can look forward to such agitations and discussions without the deepest concern.

The smaller States, grouped upon the shores of the Atlantic, were all original parties to the Constitution. They are gloriously associated with the history of the Revolutionary struggle. They bear names that are honored, and have memories that are cherished in every part of the land. They must not, through the folly of blind and bigoted leaders, lose the great special political powers which are given to them by the compromises of the Constitution.

They must not suffer that instrument, which secures to them peculiar advantages, to be weakened or destroyed.

THE UNION MUST BE RESTORED.

There is but one way to save us from demoralization, discord, and repudiation. Our Union must be restored, complete in all its parts. No section must be disorganized beyond the unavoidable necessities of war. All must be made to feel that the mighty efforts we are making to save our Union, are stimulated by a purpose to restore peace, prosperity and happiness to every section.

The vigor of war will be increased when the public mind and energies are concentrated upon the patriotic, generous purpose to restore our Union for the common good of all sections. It cannot be so united upon any bloody, any barbarous, any revolutionary, or any unconstitutional scheme, looking merely to the gratification of hatred, or purposes of party ambition, or sectional advantage. Every exertion of power, every influence of persuasion, every measure of reconciliation, must be used to restore this Union to its former condition. Let no one demand that the blood of his neighbor shall be shed; that the fruits of the labor of our citizens shall be eaten up by taxation, to gain this end, and then refuse to give up his own passions, or to modify his own opinions, to save our country, and to stop the fearful waste we are now making of treasure and of life. Let no one think that the people who have refused to yield this Union to rebellion at the South, will permit its restoration to be prevented by fanaticism at the North.

CONCLUSION.

The pervading sentiment of the great controlling sections of our country will not only save our Union, but it will do so in a way harmonizing with the genius of our institutions, the usages of our people, and the letter and

spirit of our Constitution. It will manifest itself in the customary manner by discussion and political action. The framers of our Constitution foreseeing that events would render it necessary for the people of the several States, not only thus to address our Government, but also to produce a concert of purpose and action between different communities, provided in the Constitution, that "Congress shall make no law abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."[g]

Our present alarming condition naturally calls for such expressions of public opinion with respect to the objects of this war, and the spirit in which it should be conducted, and the end for which it should be waged; when the public will is clearly expressed it must be recognized and respected by Government. It will also make itself effective in our frequently recurring elections which peacefully but rapidly form a body of Government in harmony with its purposes. It will influence congressional action, or it may lead to a convention of the States.

The condition of our country is not hopeless, unless it is made so by passions and prejudices which are inconsistent with the Government of a great country. This war, with all its evils, has taught us great truths, which if accepted by our people will place the future relations of the various sections of our Union on the firmest basis. It has made us know the value of the Union itself not only in our internal but in our foreign relations. It has given us a wisdom and knowledge of each other, which had we possessed earlier, would have averted our present calamities.

If the interest of different sections of our country are conflicting in some respects, they are so balanced and ad-

[g] U. S. Const., 1st am.

justed by nature, that there is an irrepressible tendency to intercourse, harmony and union. This tendency must, in the end, overcome mutual misapprehension. We have also learned the great mutual strength of the North and of the South, and amid all the bitterness of feeling engendered by the war each section has been taught to respect the power, resources and courage of the other.

We must accept the condition of affairs as they stand. At this moment the fortunes of our country are influenced by the results of battles. Our armies in the field must be supported; all constitutional demands of our General Government must be promptly responded to.

But war alone will not save the Union. The rule of action which is used to put down an ordinary insurrection is not applicable to a wide-spread armed resistance of great communities. It is weakness and folly to shut our eyes to this truth.

Under no circumstances can the division of the Union be conceded. We will put forth every exertion of power; we will use every policy of conciliation; we will hold out every inducement to the people of the South to return to their allegiance, consistent with honor; we will guaranty them every right, every consideration demanded by the Constitution, and by that fraternal regard which must prevail in a common country; but we can never voluntarily consent to the breaking up of the Union of these States, or the destruction of the Constitution.

Humbly acknowledging our dependence upon Almigthy God, and repenting our pride, ingratitude and disobedience, let us pray that our minds may be inspired with the wisdom, the magnanimity, the faith and charity, which will enable us to save our country.

HORATIO SEYMOUR.

Albany, Jaunary 7, 1863.

SPECIAL MESSAGES.

January 22. To the Senate:

"EXECUTIVE DEPARTMENT.
ALBANY, *January* 22, 1863.

"I have received from your honorable body the following preamble and resolution:

STATE OF NEW YORK, IN SENATE,
ALBANY, *Jan.* 19, 1863.

Whereas, It has come to the knowledge of Senators that the election of a Speaker in the Assembly is delayed by the interference and threats of a mob admitted into the lobbies of the Assembly chamber, and which has endeavored to control the legislative action of the Assembly by threats and by violence; therefore,

Resolved, That a committee of three be appointed by the President of the Senate, whose duty it shall be to confer with his Excellency the Governor, and request him to take prompt and energetic action for the protection of the Assembly from mob violence, and for the speedy and condign punishment of the authors, aiders and abettors thereof.

Ordered, That Messrs. Angel, Connolly and Ramsey be such committee.

By order of the Senate.

JAMES TERWILLIGER, *Clerk.*

These were communicated to me by a committee of the Senate. To avoid the mistaken and injurious impressions they are calculated to make, it is proper I should state that when a complaint was made on Friday last, by a member of the Assembly, that the proceedings of that body were disturbed by the disorderly conduct of persons in the lobbies and galleries, I informed him that any protection which might be called for, by any member of the Assembly, would be immediately afforded. The difficulties of the Assembly grow out of the differences of opinion, among its members, with respect to its organization.

There is an obvious impropriety in any interference, by one department of the Government, with the proceedings of any co-ordinate branch of that Government, unless a request is made by the parties interested. Before the passage of the resolutions of the Senate, every member of the Assembly, who spoke to me upon the subject, was told that he had a right to full protection; but to avoid even an apparent interference with the organization of the Assembly, which by the Constitution,[h] is expressly left to the exclusive control of that body, my action must be based upon a request for protection from those directly concerned.

Immediately upon being advised of the alleged disorders, I consulted with the mayor of this city, who made adequate arrangements to prevent any outside interference.

I feel it due to the Senate, as a matter of courtesy, to explain to them that I can only act upon a request, coming from members of that branch of the Legislature, which is affected by any disorderly proceedings.

HORATIO SEYMOUR."

January 27. To the Assembly: Transmitting the annual reports of the Commissioners of Public Accounts, the Adjutant General, Inspector General, Commissary General, Judge Advocate General, Surgeon General, Quartermaster General and Paymaster General.

February 4. To the Assembly:

ALBANY, *February* 4, 1863.

"Herewith I submit a memorial of the Prison association of New York. The object and usefulness of this organization are well known to you; and the high character of the officers and members who subscribe this memorial will secure for it your consideration.

HORATIO SEYMOUR."

For memorial see Assembly Document No. 10.

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[h] Const. 1846, art. 3, § 10.

February 4. To the Assembly:

ALBANY, *February* 4, 1863.

"I submit herewith the report of the Quarantine Commissioners. It is not easy to over-estimate the importance of the interests involved in the proper protection of the harbor of New York from quarantine diseases; and I therefore ask your attention to the suggestions contained, and the recommendations made, in the accompanying report. [See note 4.]

HORATIO SEYMOUR."

The records do not contain the report.

February 4 and 10. To the Assembly and Senate respectively: Transmitting the annual report of receipts and expenditures of the Cooper Union.

March 30. To the Senate:

"EXECUTIVE DEPARTMENT.
ALBANY, *March* 30, 1863.

"I have received the following resolution of your honorable body:

STATE OF NEW YORK, IN SENATE,
ALBANY, *March* 25, 1863.

On motion of Mr. Bell —

Resolved, That his Excellency the Governor be respectfully requested to inform the Senate, at his earliest convenience, how much of the appropriation of $30,000, made in the supply bill of last session, for 'expenses incident to transportation, care and supplies of hospitals for sick and wounded soldiers belonging to this State, &c., and for the removal of remains of officers slain in battle or dying while in service,' has been expended, and the general character of such expenditures.

By order of the Senate,
(Signed) JAS. TERWILLIGER, *Clerk.*

In compliance with the request contained therein, I submit the following information:

1st. AS TO THE AMOUNT EXPENDED. It appears from the books of the Comptroller that there has been drawn from the Treasury, by virtue of the appropriation referred to in the resolution, the sum of thirteen thousand four hundred and eighty-one dollars and two cents. There are a few unaudited accounts against this fund still outstanding, which, when paid, may increase the sum to about fifteen thousand dollars, leaving about fifteen thousand dollars unexpended.

2d. AS TO THE 'GENERAL CHARACTER' OF THE EXPENDITURES. The vouchers show that more than three-fourths of the above amount was paid out in adapting the Albany barracks to hospital purposes, fitting up the Park barracks in the city of New York, and the quarters at Riker's Island for the reception of sick and wounded soldiers, services of medical and other attendants at the above places, and for subsistence and other supplies and expenses there furnished and incurred. The balance of the sum mentioned has been mainly paid for expenses incident to the transportation, care and supplies of sick and wounded soldiers of this State by the agent at Washington, medical services, and the compensation of the State agent.

I beg to call your attention to the particular terms of the appropriation. It will be seen it is limited to those 'cases in which no provision has been made for such purpose by the Government of the United States,' and it is still further limited by requiring 'the certificate of the Governor in each particular case, stating that from the attending circumstances the item should be a public charge.'

As the Government of the United States has made general provision for the requirements of the public service, the expenditures under this act, subject to these restrictions, are necessarily quite circumscribed. I mention this that, from the fact of the non-expenditure of the whole sum,

it may not appear that due provision already exists for every class of claimants on your attention. This would be a serious error, for the past has presented many painful instances to the contrary. There have been multitudes of cases where much suffering has been induced, and others where sad and fatal consequences have resulted to individuals from the inadequacy of all present agencies for the relief of the sick and wounded — meritorious as they all are. This inadequacy does not arise from the want of liberality, or care, or skill, on the part of the General Government or its medical department. On the contrary, the hospitals, and medicines, and care furnished our soldiers, reflect the highest credit upon the medical department of the United States Government, and also upon thousands of humane nurses and attendants. But the number of sick and wounded soldiers is so great, and so liable to sudden increase, beyond all calculation, by battle, that I recommend an ample appropriation by this State for its sick and wounded troops, restricted in its application, but not so narrowed as to prevent a portion of it being used as emergencies may arise.

I have thus proposed this object in this connection, because it was suggested by your resolution and because of the limited period of your session. I am sensible that you feel as keenly as myself the obligations, of the State to see that full provision is made for the care of her citizens, in whatever relation they may be placed, and especially to those who are risking their lives in the service of their country.[10]

HORATIO SEYMOUR."

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[10] The Legislature in January adopted a concurrent resolution providing for the appointment of a joint committee to prepare a bill by which a hospital and asylum may be established for the wounded and disabled soldiers belonging, or who have belonged to the various regiments of New York State Volunteers. No bill on this subject was passed, but the Soldiers' Home was incorporated by chapter 223, passed April 24, "for the purpose of providing a home and maintenance for officers and soldiers who have served, are now

March 31. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 31, 1863.

"I have this day received the following communication from the Comptroller:

'COMPTROLLER'S OFFICE, *Albany, March* 31, 1863.

His Excellency HORATIO SEYMOUR, Governor:

SIR.—I take the liberty of asking your attention to the fact that the interest upon the State debt will be due to-morrow, and unless immediate action shall be taken by the Legislature, the State will for the first time in its history refuse to pay its interest in specie or its equivalent. Your Excellency is fully aware of the effect which such an event must have upon the hitherto untarnished honor of the State. In my annual report, and in a communication to the Legislature, on the 16th inst., I urged the importance of this subject; but as yet nothing has been done in regard to it, except that the committee on banks in the Senate, as I am informed, has reported against specie payments. Under these circumstances, I would respectfully suggest to your Excellency the propriety of a special message asking

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serving, or may hereafter serve in the volunteer forces, raised or furnished by or from the State of New York, who, by reason of wounds or other disabilities received or produced in the service of the United States, or of the State of New York, shall be unable to support themselves, and all who having been honorably discharged shall be decrepit or homeless in their old age."

The Grand Army of the Republic Soldiers' Home was incorporated in 1876 by chapter 270. It was located at Bath, Steuben county. The home was recognized by the Legislature by concurrent resolutions adopted in 1877, and was made a State institution in 1878.

By chapter 514, approved May 17, 1863, the supervisor, town clerk, and justices of the peace in each of the towns, and the common council of the respective cities were constituted a board of relief for their respective localities, with power from time to time to grant such relief to the indigent families of volunteers from this State residing in such towns or cities, and of persons ordered into the militia or naval service of the United States. The amount expended was made a charge on the town or city.

the Legislature to save the State from a step which if once taken, will in my opinion, be a source of regret through all future time.

I have the honor to be, very respectfully,

Your obedient servant,

LUCIUS ROBINSON, *Comptroller.*

There will be due to-morrow, April first, for quarterly interest on the public debt, the sum of three hundred and ninety-two thousand six hundred and thirty-four dollars and eleven cents, to wit:

Of interest on the Canal Debt.....	$342,492.69
Of interest on General Fund Debt.....	50,141.42
	$392,634.11

If paid in coin or its equivalent, the premium on this sum, at present rates, will amount to about one hundred and seventy-seven thousand dollars. Of the whole amount of interest above named, about twenty-five thousand dollars is due to foreign stockholders; the larger portion of the remainder to citizens of this State.

It is for the Legislature to determine if this interest shall be paid in specie or its equivalent. The time is short and the question is a grave one. For my own part, I can see but one course consistent with honor. Immediate provision should be made to meet the interest in gold or silver, and I therefore respectfully recommend that you suspend the ordinary rules of procedure and immediately authorize the financial officers of the State to provide for making the payment in this manner.

It is dangerous to assume that the market price of specie in any sense changes the obligations of the State to its creditors. When these debts were incurred no other form of payment was thought of. The practice of the State was

well settled. The creditor paid a premium on these loans because he was assured his money was secure and would be returned in coin or its equivalent. The State in receiving these premiums virtually pledged itself to do this in any emergency. Public improvements and temporary necessities will always make the State a borrower. It is essential, then, to preserve the public credit at the highest point. This can only be done by meeting all obligations in gold and silver unmindful of the perturbations in financial circles. In ordinary times there is no merit in paying specie. It is in periods of severe trial, like this, that a State vindicates its honor, establishes its credit and secures the confidence of the public at home and abroad.

In the present condition of the country who shall say what there is before us? A period may arrive when this State may be compelled to rely upon its own resources. How important in such contingency, that the high credit which New York has ever maintained, should be preserved.

We cannot safely overlook the policy of the able and prudent men who have managed our finances in the past. In periods of the greatest depression of paper currency, they steadily paid the interest and principal of the public debt in coin. We are now reaping the fruits of their wise policy. Let us not fail to profit by their wisdom.

We are charged with the preservation of the public credit. The people have uniformly sustained those who have protected it. It is a subject about which they are and always have been most jealous. It is manifest that any departure from this usage would forever tarnish our credit and thereby work a lasting injury to our great Commonwealth.

The credit of the State admits of no compromise; when it is once impaired it is tarnished forever. Heretofore it has been protected with scrupulous care. We received it free from blemish. Let it not suffer in our keeping. Let

us take such responsibilities as are needful to preserve it, perfect as it came to us.

New York is now pouring out its blood and its treasure to uphold the honor and dignity of the National character. Let us not withhold a sum comparatively small, to save the honor of the State. The whole amount involved is not equal to one day's expenditure by the General Government. The failure of the most important State of the Union to maintain its credit will be a National calamity. It will be more disastrous than the loss of battles or the destruction of many millions of treasure.[11]

HORATIO SEYMOUR."

April 1. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 1, 1863.

"In compliance with the request contained therein, I lay before your honorable body the accompanying memorial of the General Assembly of Indiana, in reference to the transit of produce and merchandise going from and to that State by way of the canals and railroads of New York.

HORATIO SEYMOUR."

The following is the Indiana memorial:

"TO THE SENATE AND ASSEMBLY OF THE STATE OF NEW YORK:

The General Assembly of the State of Indiana beg leave to memorialize your Hon. body, in reference to the transit of produce and merchandise going from and coming into

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[11] On the same day that the Legislature received this message, March 31, a concurrent resolution was adopted by the Senate, which was concurred in by the Assembly the next day, providing that "the interest accruing on so much of the State debt on the first day of April, as was on the first day of March, 1863, held by persons residing out of the United States, and is still held by them, be paid in gold or its equivalent."

The supply bill, chapter 210, appropriated $75,000 for premiums on coin to be purchased for the payment of interest due to foreign creditors. See 1864, special message of April 22, *post*, p. 578.

our State by way of the canals and railroads of your State, in carrying on our trade with the Atlantic seaboard. We take the greatest freedom in approaching you upon a subject somewhat delicate in its nature, from the known liberality uniformly displayed by the State of New York in her legislation in whatever might affect the right and interests of her sister States, and also from the very generous and satisfactory manner in which his Excellency, the Governor of your State, has thought fit to speak of the patriotism and wealth of the western States in his recent message to your Hon. body.

Within our own boundaries, we have no harbors and seaports, crowded with merchantmen ready to take our produce to the markets of the world, and thus relieve us from drudgery and expense of long lines of travel and transportation.

Our merchants are cut off from the rich resources of foreign trade, and our revenues deprived of the taxes on the wealth always flowing from it. Owing to that fact, with others, our citizens own but little stock in any corporation outside of our own limits, and therefore can have no control over those agencies upon which we have now solely to rely for conveyance of our produce to market. Since the breaking out of the rebellion, things which before were only inconveniences, have now become peculiar hardships. Our great national channel of commerce has become stagnant by blockade. States within easy distance, with which we once carried on a lucrative traffic, are now in arms against us, and from our border position we have to defend our soil from their incursions.

We manufacture but little of what the Government requires; our horses and mules are bought by its agents without any competing buyers, and the produce we sell to it is not more than the soldiers we have furnished would have consumed at home. Thus it occurs, that for all our surplus we have but the one market, and now one direction

of thoroughfares which we must patronize, and these thoroughfares, with one exception, pass through your State.

This, in one sense, should be no matter of complaint upon our part; we certainly feel under deep obligations to the State and people of New York, for their liberality, foresight and enterprise, in taking the risk of investing so much capital in those great artificial channels of communication. She is certainly entitled to the profits on the trade she has enticed to her marts, and ample pay for the labor of transmitting it there. But what suggestions we have to make are founded upon the comity that exists between us, as States, and the relation between our people and yours, as merchants and customers; and we only ask such legislation as you may deem compatible with the interests of your State, and as will not infringe upon the obligations already entered into with those corporations. We presume that in a normal condition of affairs, such as existed before the breaking out of the war, that the business done on through railroads and canals, at the rates then charged, was fairly remunerative, as they were enabled to add great improvements to their works, pay comfortable salaries to their officers, good wages to their employees, and leave a liberal surplus for dividends and interest on the capital invested. We further presume that a large increase of business, probably fifty per cent. more than they hitherto enjoyed, would have enabled them to have diminished their rates, and still have retained a largely increased revenue, sufficient to have satisfied the demands of ordinary invested capital, especially when that increase of business was caused by the misfortune of their customers, without whose patronage their works would be of very diminished value. But we find, contrary to such well founded presumptions, there has been an increase of rates upon freights, amounting to over forty per cent., swelling their profits to an enormous degree, enhancing the value of their securities,

increasing the revenues of the State, and distributing the drippings of suddenly acquired wealth into every avenue where their influence extends. We reflect too, that when this assessment falls upon property going to, or coming from our State (which forms a large item in their aggregate of business), it is just that much money lost to the people of our State, and to that extent diminishes our ability to provide against similar contingencies in future. So severe has it become, that in some cases the cost of transportation exceeds the original cost of the article four-fold, in others two-fold, and on an average of our trade it may be safely set down at one-half.

These things cause our people to murmur; we hear complaints all around us, that while we have cheerfully submitted to a blockade of our national channels of trade for the general good, and have furnished every requisition for men or money to assist the Government in preserving the institutions common to us, and have made voluntary sacrifices, not demanded of us by the authorities, to protect the interior of the country from the ravages of war; yet we find, with all this, there is a new burden laid upon us by those whose revenues were heretofore founded largely upon our patronage, and who have a common interest with us in the sacrifices we are making.

These complainings are not calculated to secure that harmony and good feeling which should exist between people engaged in a common cause; and we hope in future no reason will exist for their continuance. But it is not alone of high rates charged that we complain, but it is that freights are raised without sufficient notice being given, leaving the trader to pay the extra charge, when the article had been purchased with reference to a pre-existent state of affairs; and cases have come to our knowledge, well authenticated, wherein the New York Central Railroad Company have raised their freight after the stock was registered on the books of said company and ready for

transportation, and in some cases was on board of the cars before any notice of the change was given. Our people had no remedy in reach — no choice but to endure, except by the friendly co-operation of the State from which these companies derive their charters.

We therefore pray your Hon. body that such legislation may be had upon this subject as will restrict the railroads passing through your State to as low a rate of freights as will be remunerative to them and not oppressive to us, and that there shall be no advance of freights without at least thirty days' public notice being given, and no advance shall be made upon freights which have been tendered the company, ready for transportation.

In reference to the Erie Canal, we are not aware that there has been any increase of toll within the last two years, but we know that owing to the unusual amount of freight offered in the autumns of 1861 and '2, that the cost of transportation was more than doubled. This of course was lost to the producer or merchant who forwarded it, for the obvious reason that such advances could cause no corresponding change in the markets of the world which we were struggling to reach.

We therefore suggest that for the present, at least, some restriction might be placed upon boats and transportation companies as to the amount they should be allowed to receive, so that our merchants and traders can fix upon some amount as approximating to the cost of getting their produce and merchandise to market. And if, upon examination of the premises, you should find that a reduction of tolls will not reduce the revenue below an amount to be expected, even in the most prosperous times, and you should make such deductions, it will certainly ever be remembered with gratitude by the people of our State.

We are aware that the arguments we use will apply with equal force to other States, and also to other modes of transportation besides railroads and canals, and it may be

asked why do we not commence at some other place to seek a remedy for the evils of which we complain? But we must commence somewhere, and we know of no State to which we can appeal with so much hope of having justice done us, as the great State of New York, which has always shown a magnanimity and statesmanship corresponding to her resources and geographical position.

We further pray your Hon. body, that should you, in looking over the legislation of the past, find that any article, important in our trade and necessary to the comfort of our people, has been specially taxed in freights, or restricted in manufacture, so as to make it a subject of speculation or hinder the ready and free exchange of important commodities between us, that such subjects may receive such legislation as the emergencies of the times will suggest.

In conclusion, we beg leave to congratulate your State upon the material prosperity which has blessed her people, and upon the patriotic sacrifices they have made in the present war. We also congratulate them on the noble stand they have taken in favor of the reserved rights of the States and of the people, and a rigid observance of the Federal Constitution, 'the sheet anchor of our peace at home and safety abroad.' The representatives of the people who have never failed to support the State governments in all their rights, as the most competent administration for our domestic concerns and the surest bulwarks against anti-republican tendencies, we are, with yourselves, the 'supporters of the General Government in its whole constitutional vigor,' subject to the grants and limitations of the solemn compact, which for general purposes constituted it the agent of the State and people.

So long as such States as yours battle with equal zeal against anarchy among the members of the government, and the centralized monopoly of power in the hands of the Executive, you have our earnest sympathy; and with such powerful co-operation, we can never despair of the glorious

Union of our fathers, or believe it is destined to fall a victim to an unholy rebellion.

Be it resolved by the House of Representatives of the State of Indiana (the Senate concurring therein), That the foregoing memorial be transmitted by his Excellency, the Hon. O. P. Morton, Governor of this State, unto his Excellency, the Hon. Horatio Seymour, Governor of the State of New York, with the request that he lay the same before the Legislature of that State."

April 1. To the Assembly: Transmitting the following resolutions adopted by the Legislature of Kentucky, relative to federal affairs:

"*Resolved,* That our institutions are assailed by an armed rebellion on one side which can only be met by the sword; and on the other by unconstitutional acts of Congress, and startling usurpations of power by the Executive, which we have seen by experiment can be corrected by the ballot-box. Policy, as well as principle, requires that Kentucky shall await the process of reform, which is slow but sure, and refrain from all unlawful and unconstitutional acts which have already brought terrible calamities upon the country; whilst we invoke the aid of all patriotic men, to avert the evils that threaten our free institutions.

2. *Resolved,* That this General Assembly declares, as before it has oftentimes declared, that the State of Kentucky hath ever been, and is, loyal to the Government of the United States of America, and is determined to maintain that loyalty against both domestic and foreign foes.

3. *Resolved,* That this General Assembly recognizes a manifest difference between any administration of the Government and the Government itself. The one is transitory, limited in duration only to that period of time for which the officers elected by the people are charged with the conduct of the same; the other is permanent, intended by its founders to endure forever.

4. *Resolved,* That this General Assembly now, in the exercise of its right to differ in opinion with the National Executive, enters its solemn protest against the Proclamation of the President of the United States, dated 1st of January, 1863, by which he assumes to emancipate all slaves within certain States, holding the same to be unwise, unconstitutional and void.

5. *Resolved,* That this General Assembly declares that the power which has recently been assumed by the President of the United States whereby, under the guise of military necessity, he has proclaimed and extended martial law over States where war did not exist, and has suspended the writ of *habeas corpus,* is unwarranted by the Constitution,[1] and its tendency is to subordinate civil to military authority, and to subvert constitutional and free government.

6. *Resolved,* That this General Assembly declines to accept the President's proposition for emancipation, as contained in his Proclamation of the 19th of May, 1862.

7. *Resolved,* That this General Assembly deems it proper further to declare, that it, together with all the loyal people of the State, would hail with pleasure and delight any manifestation of a desire on the part of the seceded States to return to their allegiance to the Government of the Union, and would, in such event, cordially and earnestly co-operate with them in the restoration of peace, and the procurement of such guarantees as would give security to all their interests and rights.

8. *Resolved,* That Kentucky will adhere to the Constitution and the Union as the best — it may be the last — hope of popular freedom; and for all wrongs which may have been committed, or evils which may exist, will seek redress under the Constitution and within the Union, by the peaceful but powerful and irresistible agencies of the suffrages of a free people.

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[1] U. S. Const. art. 1, § 9, clause 2.

9. *Resolved,* That this General Assembly hails with pleasurable hope the recent manifestations of conservative sentiment among the people of the non-slaveholding States in their late elections, and regard the same as the earnest of a good purpose on their part to co-operate with all other loyal citizens, give security to the rights of every section, and maintain the Union and the Constitution as they were ordained by the founders of the Republic.

10. *Resolved,* That in the judgment of this General Assembly, a Convention should be called for the purpose of proposing such amendments to the National Constitution as experience has proved to be necessary to maintain that instrument in the spirit and meaning of its founders; and to that end we re-affirm and adopt the resolutions recommending a call for a Convention of the United States, approved January 25, 1861.*

11. *Resolved,* That the laws of this State must be maintained and enforced, and that it is the duty of the constituted authorities of the State to see to it, that by all constitutional means this indispensable end shall be attained.

12. *Resolved,* That the Governor be requested to forward a copy of these resolutions to the President of the United States, and to the Governor of each State, with a request that he lay the same before the Legislature of his State, and to each of our Senators and Representatives in Congress. Our Senators are instructed, and our Representatives requested, to use their best efforts to accomplish the objects of these resolutions."

April 8. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 8, 1863.

"In compliance with your resolution of this day I transmit herewith the accompanying report of the Hon. Samuel

* See *ante*, p. 328.

B. Ruggles, commissioner appointed pursuant to the concurrent resolution of the Legislature adopted April 22, 1862.[12]

HORATIO SEYMOUR."

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[12] The enlargement of the canals, involving a possible use thereof by the federal government, was subsequently considered by the Legislature at this session, resulting in the following concurrent resolutions adopted by the Senate and Assembly on the 20th and 24th of April respectively:

"At a joint meeting of the canal committees of the Senate and Assembly, to take into consideration the increased and constantly increasing tonnage on our canals, held in the Senate Chamber, March twenty-fifth, eighteen hundred and sixty-three, and adjourned from time to time for consultation upon the subject, they have agreed upon the following resolution, which, if adopted and carried out, will inaugurate a policy that will continue to this State its share of western trade and tonnage; therefore,

Resolved, That the State engineer and surveyor, under the advice and direction of the canal board, cause a survey and estimate to be made of the cost of constructing one tier of locks on the Erie canal, from Hudson river to Lake Erie, and one tier of locks on the Oswego canal, from Syracuse to Lake Ontario; and one tier of locks on the Champlain canal from Troy to Whitehall; and one tier of locks on the Cayuga and Seneca canals from Montezuma to Seneca lake; the said locks to be constructed in a permanent manner of stone, or of wood, or of wood and stone combined, and to be not less than twenty-six feet wide in the chamber, and not less than two hundred and twenty-five feet in length between the gates; the cost of each kind of lock to be estimated separately; to be located alongside of, or near to the present locks, and calculated for seven feet depth of water in the canal.

Also, to cause a survey and estimate of the quantity of excavation and other work connected therewith, necessary to maintain fifty-two feet width of bottom, and seven feet depth of water in the canals above named.

And also, if any new feeders or improvement to the present feeders will be necessary upon any portion of the canals, to bring these enlarged locks, when constructed, into use; if so, upon what portion of the canals, and the cost of the same; and to report separately on each of the above items to the next Legislature, on the first day of its session; and the said board shall appoint so many engineers and assistants, and fix their compensation, as they may deem necessary to carry out the purpose of this resolution; and

Whereas, The construction of said locks of the dimensions above specified will materially promote the interests of the United States, in providing for the common defense, augmenting the national commerce, foreign and domestic, and strengthening the bonds of the National Union; *and whereas*, the General Government may deem it desirable and important to secure, without delay, the right of perpetual passage through said canals with locks thus enlarged, free from tolls, for the vessels, gunboats, troops and munitions, military and naval, of the United States, and to render its fair equivalent to the State by contributing justly to the cost of the work; therefore,

Resolved, That the Governor be and hereby is empowered and requested to invite the President of the United States to select and detail a competent engineer in behalf and at the expense of the General Government, to consult with the engineers so to be appointed by the Canal Board, in respect to the surveys mentioned in the preceding resolution, and as to the mode of constructing the work so as most effectually to promote the national interests."

"To his Excellency HORATIO SEYMOUR,

Governor of the State of New York:

By virtue of the concurrent resolution of the Legislature, adopted April 22, 1862, and the appointment by your official predecessor pursuant to that resolution on the 6th of May following, the undersigned was specially delegated to attend at Washington, in behalf of the State, to invite the attention of the General Government to the measures proposed in the act of the said 22d of April, 'to adapt the canals of this State to the defence of the northern and northwestern lakes,' and to 'the great importance of those measures to the national interests.'

Under the requirement of the letter of authority appointing the undersigned, he now respectfully presents the following

REPORT:

In the discharge of the duty committed to the undersigned, pursuant to the concurrent resolution of the Legislature of the 22d of April last, he has attended at Washington on numerous occasions, and during a large portion of the period embraced in the two sessions of Congress, between the 12th of May, 1862, and the 10th of February following. Throughout that period he has endeavored, to the best of his ability, fully to present the subject embraced in the concurrent resolution of the Legislature, to the consideration of the President and of the Congress of the United States. In so doing, he has personally attended before the President and several of the Heads of Departments, and also before the various committees of the Houses of Congress, who have had the subject in charge. He has also attended and assisted at several meetings of members of Congress, informally assembled to consider the merits of the proposed measures, and has been engaged in constant and daily consultation and conference on the subject with individual members.

The letter of authority under which he acted, expressly permitting him to choose his 'own time and manner for accomplishing the object sought,' he has deemed it proper and necessary, by extensive correspondence and otherwise, to collect and embody the leading facts of the case, and to present them, from time to time, in behalf of the State, in written memorials and other statements, submitted to the President and to the members of Congress collectively and individually, together also with official letters from canal officers of the State, and other persons able to impart authentic information.

Commencing with the 14th of May last, the undersigned has reported, from time to time, to Governor Morgan, and since the first of January last, to yourself, in respect to the condition and progress, including the defeat (believed to be temporary) on the ninth of February last, of the bill introduced into Congress to carry out the national measures proposed by the Legislature of New York. The report to your Excellency of the 2d of April instant, refers to the important proceeding instituted on the 2d of March last, by a large number of the Senators and Representatives in the last Congress (ninety-eight in number), to call a National Convention at Chicago, on the first Tuesday of June next, practically for the purpose, among others, of presenting with undiminished force to the next Congress, the high considerations of national importance, military, commercial and political, involved in the adequate enlargement of the canals between the valley of the Mississippi and the Atlantic.

For the more convenient examination of the whole matter by the Governor, and also by the Legislature, should they wish to do so, the reports above mentioned are now embodied herewith in chronological order and in connection with other documents necessary to present the subject intelligibly.

The reports and documents thus arranged, will exhibit, among other matters —

1st. The preliminary legislative proceedings and other public movements, leading to the passage of the act of the 22d of April last, and explanatory of the motives of the Legislature.

2d. The nature and extent of 'the national interests' involved in the measures proposed by the act, and presented in behalf of the State, pursuant to the concurrent resolution of the Legislature, to the consideration of the General Government.

3d. A connected history of the proceedings and measures in Congress for carrying into effect the purposes of the act, with some of the causes of the temporary defeat of those measures, especially including the great exaggeration of the probable cost of the works proposed, and the unwarranted assumption of the want of capacity in the Erie and Oswego canals, to pass vessels required for national purposes.

4th. The immense increase in the agricultural products of the Northwestern States, crowding the canals of this State, enhancing the cost of transportation, and rendering it necessary to enlarge their locks without delay, with the beneficial effects of that enlargement on the commerce, prosperity and strength of the State and nation.

5th. The measures now in progress in the Northwestern States to obtain adequate channels for their commerce through Canada, wholly avoiding the canals and railways of New York — and also for obtaining aid and relief from the next Congress.

6th. The further measures which, under the circumstances of the case, would appear to be necessary and desirable on the part of the State to effect the objects of the act of April last.

Respectfully submitted by
SAMUEL B. RUGGLES.

Albany, April 3d, 1863.

The papers and communications referred to in the foregoing report, which may be found in Assembly Document No. 174, include the following:

No. 1. Resolutions of the Assembly of New York, March, 1862.
2. Resolutions of New York Chamber of Commerce, April 3d.
3. Memorial to State Legislature of N. Y. Chamber of Commerce, April 14th.
4. Extracts from reports of canal committees of the Senate and Assembly, April.
5. Act of Legislature of New York, April 22d.
6. Concurrent resolution of Senate and Assembly, April 22d.
7. Appointment of Samuel B. Ruggles by Governor Morgan, May 6th.
8. Mr. Ruggles' letter of acceptance, May 9th.
9. Mr. Ruggles' report to Gov. Morgan, May 14th.
10. Petition to Congress of Millard Fillmore and others.
11. Proceedings of Canal Board, fixing size of enlarged locks, May 23d.
12. Mr. Ruggles' report to Gov. Morgan, May 31st.
13. Section proposed in act of Congress for enlarging the locks of the Erie and Oswego canals.
14. Canal Auditor Benton's letter as to the cost of enlarging locks.
15. Governor Morgan's letter to Mr. Ruggles, June 3d.
16. Canal Auditor Benton's letter to Gov. Morgan as to mode of payment by U. S., June 2d.
17. Mr. Ruggles' report to Gov. Morgan, June 5th.
18. Mr. Ruggles' report to Gov. Morgan, June 11th.
19. Memorial to the President of the United States in behalf of the State of New York, June 9th.
20. Mr. Ruggles' report to Gov. Morgan, June 14th.
21. President Lincoln's Message to Congress, June 13.

22. Letter of thanks of Governor Morgan, June 19th.
23. Mr. Ruggles' report to Gov. Morgan, June 19th.
24. Letter from Governor of Massachusetts, June 23d.
25. Supplemental Memorial in respect to Canadian canals, June 28th.
26. Mr. Doty (Sec'y of Gov. Morgan) to Mr. Ruggles, July 2d.
27. Mr. Ruggles' report to Gov. Morgan, July 1st.
28. Mr. Ruggles' report to Gov. Morgan, July 2d.
29. Mr. Ruggles' report to Gov. Morgan, Nov. 28th.
30. Extract from President Lincoln's Annual Message, December.
31. Resolution of thanks to the President by N. Y. Chamber of Commerce, December.
32. Mr. Ruggles' report to Gov. Morgan, Dec. 27th.
33. Memorial to Congress by N. Y. Chamber of Commerce, Dec. 26th.
34. Mr. Ruggles' report to Governor Seymour, Feb. 9, 1863.
35. Gov. Seymour's letter to Mr. Ruggles, Feb. 13th.
36. Statement to Congress of application of revenues of N. Y. canals, Feb. 4th.
37. Statement to Congress of comparative exports of breadstuffs from New Orleans and New York, Feb. 5th.
38. Letter of E. Bennett, engineer, as to capacity of Erie canal and cost of enlarging locks, with letter of Mr. S. G. Chase showing its present crowded condition.
39. Call for Convention at Chicago.
40. Resolutions of Illinois Legislature.
41. Resolutions of Ohio Legislature.
42. Further report by Mr. Ruggles to Governor Seymour.

April 9. To the Assembly: Transmitting the annual report of the Sailors Snug Harbor.

April 11. To the Assembly:

Veto of a bill entitled "An act regulating the publication of legal notices in the county of Hamilton."

"I have received a remonstrance against the bill. * * * This remonstrance is signed by all the supervisors, by the sheriff, judges, district attorney, treasurer, clerk, and by almost all the other officers, and by a large number of citizens of that county.

Under these circumstances, it is my duty to return the bill without my signature.

It is due to the Legislature that it should be informed of this strong expression of the county against this local measure.

I therefore transmit the remonstrance, with the bill, that the Assembly may be advised of it in their action."

The bill was not passed over the veto.

April 13. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 13, 1863.

"The question of a method by which those of our fellow-citizens who are absent in the military and naval service of the nation may be enabled to enjoy their right of suffrage, is one of great interest to the people of this State, and has justly excited their attention. I do not doubt that the members of the Legislature participate in the general desire that those who so nobly endure fatigue and suffering, and peril life in the hope that by such sacrifices our National Union may be preserved and our Constitution upheld, shall, if possible, be secured an opportunity for the free and intelligent exercise of all their political rights and privileges. The Constitution of this State requires the elector to vote in the election district in which he resides; but it is claimed by some that a law can be passed whereby the vote of an absent citizen may be given by his authorized

representative. It is clear to me that the Constitution intends that the right to vote shall only be exercised by the elector in person.[1] It would be an insult and injury to the soldier to place the exercise of this right upon a doubtful or unconstitutional law, when it can be readily secured to him by a constitutional amendment.

While my own opinion upon the point is decided, and will govern my action, it is well to consider the matter under a less positive aspect. If we concede that it is one of doubt, we should not close our eyes to the possible results of an attempt to exercise it, in view of that doubt which is felt by men of all parties in both branches of the Legislature and elsewhere. It is possible that the next Presidential election may be decided by the vote of a single State, and if votes by proxy are authorized, it is not impossible that such votes would, in such State, decide the election in favor of one party or the other. It surely cannot be necessary to impress upon any patriotic thoughtful mind, the fearful danger which would attend the complication of the disastrous civil war which now afflicts the country, by the interposition of a well founded doubt as to the person rightfully entitled to the Presidential office. The most intense earnestness, and the most desperate determination which have ever marked the conflicts of men, would characterize such a contest. The decisions of partizan officers, the secret plottings, excited debates and interested conclusions of the two Houses of Congress, and the action, more or less violent, of the people at a period when the public mind is violently inflamed, and when the principles and rules which have formed the real strength of our institutions are dangerously unsettled, would convulse this community. That man must be sanguine, indeed, who can hope that our National Government would survive such contests.

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[1] Const. 1846, art. 2, § 1.

It is not necessary that the effort to secure to our gallant soldiers and seamen a just participation in the choice of the next administration of the National Government, should be subjected to such dangers. A proposed amendment of the Constitution, giving to the Legislature the needful power upon this subject, can be adopted at the present session, and if concurred in by the next Legislature, can be submitted to the people in such season, that, if their decision is favorable, the action which would be afterwards necessary, could be taken by that Legislature. I respectfully recommend that this course be taken, rather than the passage of an unconstitutional law or one of questionable validity.

Great care should be taken to prevent, by the most efficient checks, the abuses and frauds to which the exercise of the rights of suffrage by absentees would be liable. These safeguards would properly be a matter of legislation after the adoption of a constitutional amendment. Measures should be taken for securing perfect independence to absent soldiers and seamen in giving their votes, which shall be so comprehensive and efficient, as to relieve any reasonable apprehension upon this point.

The conduct and policy of high officials have caused great distrust in relation to the freedom from restraint and coercion, which should be accorded to the absentees in the exercise of this right. The people of this State will never consent that their absent brethren in the national service shall be debarred, when they discharge the most sacred duty of the citizen, from the enjoyment of that entire freedom of opinion which they have by an emphatic expression at the ballot box secured for themselves, and which they will firmly maintain. It would be worse than a mockery to allow those secluded in camps or upon ships to vote, if they are not permitted to receive letters and papers from their friends, or if they have not the same freedom in reading public journals, accorded to their brethren at home, to

aid them in the formation of their opinions in respect to the conduct of those in power, the issues to be decided at the election, and the character of the opposing candidate. If the expression of their opinions by the votes they give, or by customary political action, is to subject officers to dismissal from service, and soldiers to increased privation, hardship and exposure, the flames of civil war will be kindled at the North. I have noticed, with deep regret, attempts on the part of some of the officers of the National Government, to interfere with the free enjoyment of their political opinions by persons in the army.

There have been marked instances of this kind which have justly excited deep feeling throughout the country. These inexcusable acts of official tyranny, are rendered more objectionable by the language used in their execution, which is at once opprobrious in terms and a wanton and unjust attack upon one-half of the people of sovereign and loyal States.

While subordinate officers are thus punished for doing their duty as citizens at their homes, those of high rank have been employed to interfere in the election of States in which they are not residents.

No reasonable man can suppose that the people of this country will permit the noble army enlisted for the purpose of maintaining the National Government, to be used for electioneering purposes by those who are charged with the temporary administration of that government, or who are seeking an additional term of power. I hope that the wisdom of those to whom the destinies of the nation are now confided by the Constitution, will admonish them in season of the dangers of acts marked by these features of wrong and oppression. Whether it does or not I have confidence that the wisdom of the people and the Legislature of this State, will be sufficient to secure to its absent soldiers and seamen, the freedom of political opinion and action, which

is their inalienable right, and in that confidence I have made the recommendation above expressed.[13]

HORATIO SEYMOUR."

April 16. To the Senate:

Returning for correction of clerical errors, not specified, a bill entitled "An act to incorporate the Harlaem Savings Bank."[14]

April 17. To the Assembly:

Returning for correction a bill entitled "An act in relation to draining certain low lands situate in the towns of Blooming Grove and Chester in the county of Orange."[15]

April 22. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to revise and consolidate the laws in relation to Amsterdam village in Montgomery County,' passed April 17, 1854."

"The third section of this bill is unconstitutional — no person can be deprived of his property without compensation.[k]

There are other provisions of the bill which are objectionable, but the one mentioned is decisive."

Section 3 authorized the correction of assessment rolls by including omitted persons and property, but without any provision for notice of hearing. The bill was not passed over the veto.

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[13] See special message of April 24, vetoing soldier vote bill. The bill was not passed over the veto. Subsequently the Legislature adopted a constitutional amendment, authorizing absent soldiers and sailors to vote, and providing for the canvass and return of the votes. This amendment was adopted again by the Legislature of 1864, and approved by the people and became a part of article 2, section 1 of the Constitution.

[14] The Harlaem Savings Bank bill was corrected, passed again, and became a law, chapter 175, on the 17th of April.

[15] The Blooming Grove and Chester drainage bill was corrected, passed again, and became a law, chapter 257, on the 29th of April.

[k] Const. 1846, art. 1, § 6.

April 24. To the Senate:

Veto of a bill entitled "An act to secure the elective franchise to the qualified voters of the army and navy of the State of New York."

"It is so clearly in violation of the Constitution, in the judgment of men of all parties, that it is needless to dwell upon that objection to the bill. While it only received, in the Assembly, the number of votes necessary to its passage, some of those who voted for it openly stated their opposition to the measure. After its passage, that branch of the Legislature, with great unanimity and without regard to political differences, adopted the resolution for an amendment of the Constitution, to secure the objects of this bill, in accordance with the recommendations of the message which I lately sent to the Legislature, on this subject. I do not doubt that the Senate will also pass these resolutions with the same unanimity, and then the whole subject will be disposed of, with the assent and approval of all, and in a mode free from all doubts and uncertainties.

This bill is not only unconstitutional, but it is also extremely defective and highly objectionable. The time yet remaining of the present session, will not permit me to specify all the objections to its details. It does not require the proxy of the soldier to be proven before the representative of the State, but gives the power only to the field officers of regiments, who have been recently brought within the operation of the most arbitrary rules of military government; it does not permit the soldier to choose the friend in whom he would most confide as his proxy, but requires him to select one from the class of freeholders, who are not recognized by our Constitution as entitled to special privileges; it subjects the person appointed (though without his consent) as a proxy, to the penalties of a criminal offence — fine and imprisonment — for refusing or

neglecting to deposit the vote he receives, though he may believe it is not genuine; it provides no means of verifying, at the polls, the authenticity of proxies; it requires the inspectors to deposit in the ballot box, under the penalties of a criminal offence, the ballots received with any proxy, however much reason there may be to doubt its authenticity; it allows proxies and ballots to be sent by mail or otherwise, which permits a messenger to be selected by other persons than the voter; it does not require the messenger to be sworn; it does not require him to deliver the proxies and ballots to the persons named as proxies, but permits him to destroy or change the proxies and ballots, or deliver them to any unsworn and unauthorized person he may select; it does not make the change or destruction of the ballots, except by the person appointed as proxy, a criminal offence, or punish such an act in any manner; it fails to protect the secrecy of the ballot, and it requires the person named as proxy to deposit in the ballot box, the ballots delivered to him, with a proxy, by an unknown person, although they may be different from those he knows were sent by the voter. This brief statement will be sufficient to satisfy all of the many opportunities this bill affords for gross frauds upon the electors in the army and upon the ballot box at home. The deposit of a ballot is a final and irrevocable act, and the people will never permit ballots to be received, unless with abundant guarantees that they are, beyond doubt, the free act of the electors.

The bill is in conflict with vital principles of electoral purity and independence. It is well said by Dr. Lieber, in his work on 'Civil Liberty and Self Government,' that 'All elections must be superintended by election judges and officers, independent of the executive, or any other organized or unorganized power of the government. The indecency, as well as the absurdity and immorality of the government recommending what is to be voted, ought never to be permitted.' This bill not only fails to guard against

abuses and frauds, but it offers every inducement and temptation to perpetrate them, by those who are under the immediate and particular control of the General Government. That Government has not hesitated to interfere, directly, with the local elections, by permitting officers of high rank to engage in them, in States of which they are not citizens. In marked instances, high and profitable military commissions have been given to those who have never rendered one day of military duty, who have never been upon a battle field, but who have been in the receipt of military pay and military honors, to support them in their interference, in behalf of the Administration, with the elective franchises of different sovereign and loyal States.

Not only have some been thus rewarded for going beyond the bounds of military propriety, but other and subordinate officers have been punished and degraded for the fair and independent exercise of their political rights, at their own homes, and in the performance of their civil duties. I call the attention of the Legislature and the public to the following order:

WAR DEPARTMENT:

ADJUTANT GENERAL'S OFFICE.
WASHINGTON, *March* 13, 1863.

[Special Orders — No. 119.]

(Extract.)

34. By direction of the President, the following officer is hereby dismissed from the service of the United States:

Lieut. A. J. Edgerly, 4th New Hampshire Volunteers, for circulating Copperhead tickets — doing all in his power to promote the success of the rebel cause in his State.

By order of the Secretary of War,

L. THOMAS, Adjutant General.

To the Governor of New Hampshire.

I regret to say, that I have ample evidence that this order was issued in the terms above recited.

This order, unjust and unworthy in its purposes, and most offensive in its terms, punishes a citizen and a soldier for supporting a candidate for the office of Governor, in his own State, who received many thousand more of the votes of its electors than any other candidate for the station, including the one who represented, more particularly, the views and purposes of the National Administration. Such acts are more disastrous to the cause of our Union than the loss of battles. Such violent measures of partisanship weaken, divide and distract the people of the North, at the very moment they are called upon, without distinction of party, to make vast sacrifices of blood and treasure to uphold the Government. Notwithstanding the notoriety of these acts, the bill I return throws no guard around the rights and independence of our soldiers in the field. An amendment, designed to protect them against coercion and fraud, was rejected in one branch of the Legislature.

I deem it my duty not only to state these objections to the bill, as reasons why I cannot sign it, but also to protest, in behalf of the people of this State, against the wrongs of which I have spoken; and for the further purpose of securing such discussion in regard to them, when the Constitution is amended in pursuance of the recommendations I have submitted, that the legislation which may be hereafter had shall be calculated to secure the rights of our citizens and soldiers, and to punish every attempt to invade their rights by force or by fraud."

The bill was not passed over the veto. [See Note No. 13 for constitutional amendment on this subject.]

April 25. The Legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

May 7.

Veto of a bill entitled "An act to authorize the construction of a railroad in certain streets and avenues in New York."

"In view of the importance of this measure I have given a full and patient hearing to the friends and opponents of the act to authorize the construction of a railroad in certain streets and avenues in New York. I have come to the conclusion that I ought not to approve of the bill. I hold it to be unconstitutional, as it permits the use of such streets and avenues without the consent of the mayor, aldermen and commonalty of the City of New York, and without providing for any compensation for such use.[1] In this respect I deem it an invasion of the corporate franchises and property of the people of that city against the protest of its local government. The bill has other objectionable aspects. It grants to persons therein named valuable and important privileges which have been earnestly sought for by different parties at different times, and it deeply concerns the interest and comfort of the people of the City of New York. If these franchises are to be granted, it should be done under the provisions designated to secure the largest revenue or the cheapest mode of conveyance. It is notorious that propositions to secure these objects were neglected. Public interest and morals demand that all such grants to individuals or corporations be carefully guarded against any preference or favoritism. It is urged with truth that some parties interested in this bill have strong claims upon public favor and justice. The owners of stages and omnibuses who for many years have promoted the growth and prosperity of the City of New York, should be protected. The property they have ac-

[1] Const. 1846, art. 1, § 6.

quired by long years of patient labor ought not to be destroyed without just compensation. I trust and believe this meritorious class will be amply and liberally remunerated should their franchises and property be impaired by the introduction of railways. While I feel a strong interest in their behalf, this feature of the bill does not overcome the grave objections to its approval as a whole measure. It is also urged that the city government has granted to the Harlem Railroad Company the right to run its tracks through the same streets without giving any protection to the owners of stage lines, and that the grant was made covertly and in a manner to evade the process of courts and the decisions of judicial tribunals, and that there are ample evidences that such grants were obtained by corrupt appliances.

It is also feared that further action of a similar character may be had by the city government, which will give to the Harlem road the privilege of laying its tracks in the different streets and avenues in a manner injurious to public interests and public morals, and subversive of the rights and franchises of individuals and corporations.

If this bill becomes a law it is claimed that the power of the city government to make such injurious and corrupt grants will be annulled. It is my duty to guard against improvident, unjust or unconstitutional action by our State Legislature. The proposition that any public officer should sanction an improper measure to prevent an abuse of power by other officials is full of danger. It furnishes a plausible pretext under which corrupt or injurious legislation or public action can be shielded. This very case is a striking proof of the truth of this. The city authorities, upon the ground that this bill would probably become a law, made the grant to the Harlem road under circumstances above stated, although they had before refused to make such grant, and the mayor justifies his approval of the measure on the ground of anticipated legislative abuse in the enact-

ment of the bill in question. I am now urged to approve this act for the purpose of preventing improper action by the city government, and thus, by a vicious reasoning, two public measures, each improper in itself, are to receive the sanction of two official bodies, because each is apprehensive that the other is about to consummate a wrong. The dangerous facility which such reasoning lends to the adoption of bad measures, under the color of preventing worse by the others, how it misleads the conscience of those who entertain it, how it creates a scramble between public authorities, in the distribution of valuable franchises under the pretext of the public good, how demoralizing the tendency upon legislative bodies and upon all incumbents of public trust, is sufficiently obvious.

I must discharge my own duty and leave to the other departments the discharge of theirs under their accountability to their constituents. The citizens of New York have exclusive power of electing their local rulers, and must abide the result of their action. I have no control over the city government beyond my power to remove the mayor for misconduct. If complaints are made against him, they must be presented according to the statute, which gives him an opportunity to reply.

If this bill should become a law, the state and city government would be in a position of antagonism on a local subject. The practice of legislative interference with the rights, local self-government, and with the franchises of our great commercial metropolis, is full of mischief. It has not only wronged nearly one quarter of the population of the State, but has brought marked evils into legislation. By transferring appointments and jurisdiction from the locality to the capital, measures of the greatest concern and importance may be determined by those having no knowledge of, or direct concern in the vast interest they are affecting. This not only lends to numberless schemes for personal advancement at the expense of a municipal popu-

lation, but also causes a constant sense of insecurity in the enjoyment of vested and personal rights. It tends to corruption and to form an active body who surround the Capitol and improperly influence and shape its legislation. Much of the odium which frequently attaches to the character of representatives is due to the fact that they are made unconscious instruments of those skilled in the art of procuring or preventing the passage of laws.

The rights of the city and interests of the country demand that this recent policy of interference with local rights and legislation, and with the genius and spirit of our government should be discouraged and abandoned. The assumption of local and municipal jurisdiction and the centralization of power have proved destructive to the purity of our legislation, and endangered the preservation of our rights and the maintenance of our political institutions."

1864. JANUARY 5. LEGISLATURE, EIGHTY-SEVENTH SESSION.

HORATIO SEYMOUR, Governor.

ANNUAL MESSAGE.

To THE LEGISLATURE.— During the past year the people of New York have had reason to be thankful to Almighty God for the blessings of health and abundance. Our mechanics have been actively employed, our farmers have been rewarded with generous returns for their labor. The benefactions of our State have been liberal to those suffering from want or infirmities.

The annual reports of the State charitable institutions will be submitted to you. That of the State Lunatic Asylum shows that on November 30th there were 534 patients therein, being an increase of twenty over the beginning of

the year. One hundred and eighteen patients were discharged, recovered or improved. On December 1, there were three hundred and thirty-one pupils under instruction, two hundred and fifty-seven of whom are beneficiaries of the State, in the Deaf and Dumb Asylum, and one hundred and fifty-one pupils in the Institution for the Blind. There has been an average of one hundred and forty pupils during the past year in the Asylum for Idiots, which was its full capacity; of these, one hundred and twenty-three were beneficiaries of the State. The Inebriate Asylum will be opened during the present month.[1] The enhanced prices of the necessaries of life will render the patronage of the State peculiarly important, and these noble charities will undoubtedly receive at your hands that continued support to which they are justly entitled.

I renew my recommendation for the appointment of a member of the medical profession as a Commissioner of Lunacy, whose duty it shall be to examine into the condition of the insane confined in the almshouses, jails and private lunatic asylums.[2]

STAFF REPORTS.

The annual reports of the members of my military staff will present much important statistical matter as well as correspondence of interest. They embrace a detailed account of the number of volunteers raised, organization of militia, their service in Pennsylvania and Baltimore, condition of the State arsenals and armories, the fortified defences of the State, the details of the medical department, the relief afforded to sick and wounded soldiers, and other facts for your consideration.

The Bureau of Military Statistics is accomplishing the object of its mission. Its collections embrace invaluable

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1 By chapter 141, passed April 8, the commissioners of charity of the city of New York were authorized to establish therein an asylum for inebriates. The act regulated the administration and discipline of the asylum.

2 See L. 1874, chapter 446, as to the office of commissioner in lunacy.

official and historical material, illustrating the part the State has taken in the war, biographies of volunteers, histories of regiments and other organizations, and an account of the aid afforded by towns, cities and counties. No other State has so systematically entered upon the work of preserving these important records, so honorable to our people and so justly due the brave men who are risking their lives, and those who are so munificently responding to the demands of the period.[3]

VETERANS OF 1812.

By an Act passed by the Legislature, in 1859, the amount due the New York soldiers of the war of 1812 was ascertained and certificates were given therefor. The honor of the State and justice to a suffering class of men require that these certificates should be paid by the State and be held as claims against the General Government.

EDUCATIONAL.

The condition of the Colleges and Academies will be exhibited in the Report of the Regents of the University. While these institutions have liberally contributed to the rank and file of the army, their present numbers are but little diminished below those of former years. Amid the agitations of war the cause of liberal learning has not been neglected.

COMMON SCHOOLS.

The Superintendent of Public Instruction reports as follows:

Moneys appropriated for the support of Common Schools during the year from the following sources, viz:

Public School Moneys, including ¾ mill tax..	$1,345,247.64
Voluntary taxation in the School Districts...	2,095,719.71

[3] Chapter 51, passed March 21, 1864, regulated the use and inspection of books and documents in the bureau of military statistics, and defined the object of the bureau.

Rate bills	$363,756.48
Other sources	76,731.13
Total	$3,881,454.96

Expended during the year:	
Teachers' wages	$2,726,198.10
Libraries	29,522.22
Apparatus	132,043.44
Building and repairs	430,488.75
Miscellaneous	539,747.75
Total	$3,858,900.26

STATISTICAL.

Total number of children, between the ages of four and twenty-one years	1,356,900
Number of children who have attended school at any time during the year	887,570
Teachers employed at the same time for six months or more	15,701
Whole number of teachers employed	26,213
Whole number of male teachers	6,401
Whole number of female teachers	19,827
Total number of school districts	11,742
Total number of school houses	11,749
Number of months' school	88,734
Number of months' school by qualified teachers	88,659
Average number of months' school	50
Number of volumes in district libraries	1,175,335
Number of pupils attending the Normal School during the year	279
Number of teachers instructed in Teachers' Institutes	8,771
Number of teachers in Teachers' Classes in Academies	1,562

Amount of money to be apportioned by the State Superintendent of Public Instruction for the support of common schools for the current fiscal year $1,419,841.11

In view of the dignity and value of the office of Teacher, I urge upon the public the duty of giving an enlarged pay for their services at this time when the expenses of living are heavily increased. The pay of most classes of persons in public or private employment has been increased. It would be disreputable to our people if those who educate their children should be excepted from this rule. In no other way can competent teachers be retained.

I commend to your favorable consideration the Society for the Reformation of Juvenile Delinquents in the city of New York, and the House of Refuge of Western New York.

STATE PRISONS.

The Inspectors of State Prisons report that these institutions have recovered from the embarrassment under which they labored during the two years immediately succeeding the commencement of our national troubles. The prostration of business had a most serious effect upon prison labor and prison finances.

Parties holding contracts for prison labor were in many cases largely engaged in southern trade. The cessation of that trade, the losses of debt which grew out of it, and the closing up of the ordinary channels of business, necessarily caused too many of them serious losses. But during the past year there has been a decided improvement, and the total cash receipts of the three prisons during that period are reported at..... $256,195.69
The earnings for the same period are stated at 228,330.74
And the expenditures for the same period for the support of the prison, not including buildings and repairs, are stated at..... 266,580.80

A portion of the receipts, however, are to be credited to the arrears that accrued during the previous two years.

The Inspectors have for several years earnestly requested that Sing Sing prison be placed in a more secure and favorable position by having a proper guard wall constructed. The absence of such wall makes a larger force of officers and guards necessary, and therefore there is, compared with other prisons, a larger yearly expense for guarding the prison.

The pay roll at Auburn averages per month..	$2,861.00
At Clinton	2,408.00
At Sing Sing	4,354.00

The average number of convicts the past years is stated as follows:

Auburn	772
Clinton	435
Sing Sing (male and female)	1,078

The number of convicts in prison September 30, 1863, is reported at:

Auburn	722
Clinton	392
Sing Sing (male and female)	967
	2,081

The number of cells at

Auburn	992
Clinton	544
Sing Sing (male and female)	1,308

By recent acts of the Legislature, convicts can, by good behavior, shorten the terms of their imprisonment twenty-four days in each year. I advise an extension of this sys-

tem. It should be so graduated that it will give more encouragement to convicts sentenced for long terms. Those who behave well for many years give stronger evidences of reformation than can be shown by those confined for shorter periods. An allowance for good conduct should be made of one month on each of the first two years; of two months on each succeeding year to the fifth year; of three months on each following year to the tenth year; and of four months on each remaining year of the terms of their imprisonment. Under this system a person sentenced for five years can reduce his term to four years and four months; those for ten years to eight years and one month; those for fifteen years to eleven years and five months.

This will be humane and wise; it will encourage hopes and form habits essential to reformation. It will not unduly shorten the terms of imprisonment, as it will be taken into account by our courts in making sentence. It will improve the discipline of prisons and save the necessity for degrading punishments. It will diminish the number of pardons, which are always attended with great evils, and finally it will return the convict to society with such proofs of good character as will give him self-respect and the confidence of his neighbors. I earnestly urge the subject upon the attention of the Legislature. I also advise that the Inspectors of our Prisons be allowed to give the convicts, upon the same principles, the benefit of their good conduct in the past.[4]

The Prison Association of New York is required by law to inspect the prisons in the State, and to report to the Legislature their condition. The work of inspection has been thoroughly performed. All the State prisons, the penitentiaries, and the county jails, with but few excep-

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[4] The Governor's scheme of commutation in prisons was adopted by the Legislature, and included in chapter 321, passed April 23, amending the act of 1863, chapter 415.

tions, have been visited and examined. The report of the association will lay before you the results of this investigation. I trust that the suggestions of this report will be considered by you. As the law imposes upon the Prison Association an annual examination of our prisons, I recommend a renewal of the appropriation to that end.[5]

STATE BANKS.

The Annual report of the Superintendent of the Banking Department shows that there were three hundred and nine banks, with an aggregate capital of $109,258,147, doing business on the 30th day of Sept., 1863, and that fifty-one banks were closing business voluntarily and from insolvency.

The total amount of circulation issued by that officer on the 30th of September last, was $42,192,645. Of this amount $35,252,219 was issued to banking associations and individual bankers, and is secured as follows:

Bonds and mortgages		$3,862,097.47
New York State stock	$17,343,140.10	
United States stock	15,797,850.00	
Illinois State stock	350,933.33	
Cash in deposit	108,280.86	
		33,600,204.29
Held for incorporated banks under special laws		76,934.84
		$37,539,236.60
Aggregate held September 30, 1862		36,442,310.98
Increase for the year		$1,096,925.62
Increase in secured circulation during the year		989,770.00

[5] Chapter 401, approved April 25, appropriated $3,000 for the Prison Association of New York.

The increase and decrease in the kinds of security held, have been as follows:

Increase in U. S. stock.....	$3,898,400.00	
Increase in cash	16,205.96	
		$3,914,605.96
Decrease in N. Y. S. stock..	$1,679,759.00	
Decrease in st'ks of other States.....	87,533.34	
Decrease in b'ds and mortgages.....	1,050,397.00	
		2,817,680.34
		$1,096,925.62

Our Banking system, which has been tested by time, and has grown up with the business of New York, is threatened by an untried financial scheme of the General Government. It is proposed to build up in the place of State Institutions an organization with all the moneyed power of a National Bank, with the insecurity and discount upon its currency which must attach to the bills of corporations issued in remote or inaccessible points in the States or Territories, and which have no common centre for their redemption. I advise some legislation for the protection of our State system. This great commercial State must not, in the event of the failure of the National scheme, be left without either currency or organization to carry on the business of our community.*

NATIONAL BANKS.

I am informed by the Comptroller of the Currency that seventeen banks, with an aggregate capital of two million one hundred and forty thousand dollars, had, on the 10th

* For an act enabling State banks to become national banks, see 1865, note 4, *post*, p. 587.

of December last, been organized in this State under the National Currency Act. Three of these banks with a total capital of one million dollars, are in the city of New York.

SALT SPRINGS.

The annual report of the Superintendent of the Onondaga Salt Springs shows an inspection during the year 1863 of about eight million bushels, which exceeds that of 1862 by nearly one million bushels. The duty received last year amounts to about eighty-thousand dollars.

FINANCES.

The comptroller, in his annual report to the Legislature in January last, estimated the deficiency in the revenue of the General Fund at about seven hundred and fifty-five thousand dollars. The large appropriations made in the Supply bill, and in special acts, increase this deficit to nearly twelve hundred thousand dollars at the close of September, as will be seen below:

STATEMENT OF THE GENERAL FUND.

Balance in the Treasury to the credit thereof on September 30, 1862	$821,612.11
Receipts of the year	7,821,891.87
	$8,643,504.08
Payments	9,836,291.85
Deficiency September 30, 1863	$1,192,787.77

OTHER FUNDS.

Balance in the Treasury to the credit of all the funds except the Canal Fund, September 30, 1862	$1,355,732.02
Receipts of the year	10,821,972.54
	$12,177,704.56
Payments	12,711,993.72
Treasury overdrawn, Sept. 30, 1862	$534,289.16

The following are the principal appropriations made by the Legislature of 1863, not embraced in the annual estimates:

For bounties to volunteers	$3,000,000
For harbor and frontier defences	1,000,000
For purchase of arms	400,000
For sick and wounded soldiers	200,000
For Supply Bill, about	637,000
	$5,337,000

Of this about two millions one hundred thousand dollars has been drawn at the close of the fiscal year. To meet the draft for bounties to volunteers, the Comptroller made a temporary loan of two million dollars. This will have to be increased to three millions.[6]

STATE TAX.

There was levied in 1863, a direct tax of five mills on the dollar on the assessed valuations of the property of

[6] Chapter 182, passed April 14, appropriated $3,100,000 to reimburse the canal fund, for sums borrowed to be used in the payment of bounties, and for $3,000,000 of which the comptroller had issued bonds to the Commissioners of the Canal Fund. The same act made an additional appropriation of $3,000,000 for bounties on enlistments prior to April 1, 1864.

the State, for the following objects: three-fourths of a mill for schools; three-eighths for canals; two mills for general purposes; one and eleven-sixteenths for bounties; and three-sixteenths for the Albany and Susquehanna railroad. The aggregate proceeds of the State tax levied in 1862 and received during the last fiscal year, was $5,749,930.71.

CANAL FUND.

Balance of the Canal Fund Sept. 30, 1862..		$4,589,903.83
Received during the fiscal year for Canal Tolls, rent of surplus water, interest on revenues, &c.....		6,722,268.45
Payments during the same period....		$11,311,572.28
For Redemption of stocks..	$733,300.00	
For interest on stocks.....	1,381,995.75	
To Canal Commissioners, repair contractors, superintendents, collectors and weighmasters.....	1,132,532.85	
Miscellaneous objects.....	1,188,126.46	
		4,435,955.07
Leaving a balance to the credit of the Canal Fund, in the treasury and invested, on Sept. 30, 1863, of.....		$6,875,617.21

Revenues for the fiscal year ending 30th Sept. 1863:

Canal tolls	$5,028,431.32
Rent of surplus waters.....	1,160.00
Interest on current revenues, &c.....	58,016.50
Miscellaneous receipts	30,888.52
	$5,118,501.35

Payments during the year for repairs, salaries, &c.	$770,882.52
	$4,347,618.81
Payments to sinking funds, &c.	3,366,242.00
Remainder	$981,376.17

The receipts from canal tolls for the navigation season of 1863 was $4,645,095.27, being a falling off as compared with the preceding year of $543,848.

INTERNAL CARRYING TRADE.

The following exhibits the extent of the carrying trade of the State in 1863:

Tonnage of Canals for 1863, estimated.	5,400,000 tons.
Tonnage of Railroads to Sept. 30, 1863, ascertained	4,720,602 "
For the year	10,120,602 tons.

Estimated value of property carried in 1863:

On the Canals	$240,000,000
On the Railroads	207,680,000
For a single year	$447,680,000

CANALS.

A deep interest is felt with regard to our commerce with the Western States. Its growing value and the loss of our trade with the Southern States make us dependent for our commercial prosperity upon that section of our country which sustains our domestic and foreign commerce, and which adds so largely to the imports and business prosperity of the city of New York. This State will be untrue

to itself if it fails to control this great source of wealth by a vigorous and generous policy. Rather than suffer its diversion into other channels we should strike off all tolls upon Western produce. A number of projects for enabling vessels to pass from the Mississippi river to the harbor of New York have been brought to the public attention. By one it is proposed to enlarge the locks on the Erie Canal to admit of the passage of gunboats. Another plan is the construction of a ship canal around the falls of Niagara, and the enlargement of the locks between Oswego and the city of Albany. The third project is the enlargement of the locks between the Hudson river and Lake Champlain, and a more perfect connection between that lake and the St. Lawrence. New York should exhibit that degree of interest in all measures designed to benefit the West, which will show our purpose to keep up the most intimate commercial relationship with that portion of our Union. The rates of tolls charged upon transportation should be governed by the interests of this commerce and not by the amounts which may be paid directly into the treasury of the State. The increase of our wealth from the growth and value of this commerce can be made to add far more to the income of the State than the entire receipts from all our canals. The tolls they pay are of little importance compared with the wealth and prosperity which the domestic and foreign commerce of our country diffuse among all classes of our citizens.[7]

CHENANGO CANAL.

I recommend an appropriation to extend the Chenango Canal, so that it may be connected with the coal fields of Pennsylvania. This will make that work productive to the State, and give value to the deposits of iron ore along its northern section; it will also lessen the cost of fuel. The importance of this is now felt in every part of our State. Our system of internal navigation will not be complete

[7] Chapter 186, passed April 15, appropriated $295,000 for enlarging locks and otherwise improving the Champlain canal.

until this is done and the people of the State will not be free from combinations to increase the price of fuel until one of the channels by which it is brought into the State shall, under its control, regulate the price of transportation of an article essential to the comfort and to the business and manufacturing interests of our country.[8]

OBSTRUCTIONS IN THE HUDSON RIVER.

I recommend a further appropriation for the removal of obstructions in the Hudson River. The money expended under the act of the last Legislature has improved the channel, and a further small sum will enable the Commissioners to make great additional improvements.[9]

FOREIGN COMMERCE.

The destruction of American shipping by armed privateers has been disastrous to our carrying trade. I submit, with the documents accompanying the Message, a statement prepared by a prominent commercial editor, to which I invite your earnest consideration. From this it appears that one hundred and eighty-four vessels, aggregating 84,871 tons, and, with their cargoes, valued at $15,000,000, have been destroyed upon the high seas. Yet this amount shows but a small part of the injury and loss we have suffered. The following figures will afford an idea of its extent:

	Value under American flag.	Value under foreign flag.
Foreign carrying trade in 1860	$234,000,000	$150,000,000
Foreign carrying trade in 1861	150,000,000	238,000,000
Foreign carrying trade first two quarters in 1862	55,090,000	146,000,000

[8] The Chenango Canal extension was provided for by chapter 185, passed April 15, which appropriated $550,000 for this purpose.

[9] Chapter 105, passed April 1, appropriated $134,000 for continuing the Hudson River improvement, authorized by the act of 1863.

This loss falls mainly upon the city of New York. These alarming and humiliating results demand the immediate and earnest attention of the State and National Governments.

IMMIGRATION.

During the past year there was a very large increase in immigration from foreign countries to the port of New York, the number arrived being 156,843 against 76,306 in 1862. This is the largest immigration, one year excepted, since 1855. From information received it is believed that there will not be much, if any diminution in the emigration from Europe while the demand for labor continues and is so well paid.

CONSTITUTIONAL AMENDMENT.

The two Houses of the Legislature, at their last session, adopted a concurrent resolution proposing an amendment to the Constitution, having for its object the speedy disposition of the business which has accumulated in the Court of Appeals. If it receives your approval, it may be submitted to the people at an early period in the present year. Delay in the administration of justice is a public evil, and it is especially so where it occurs in a court of last resort. The constitution of the Court of Appeals brings a large proportion of the litigation arising in the numerous tribunals before it for ultimate adjudication. Hence the court was overburdened from its organization, and, notwithstanding the industry of the judges, the arrearages have been steadily increasing, until a remedy cannot be postponed. The proposed amendment, if established, will enable the present court and the additional tribunal to dispose of the arrears and keep down the accruing business, until some other system respecting the judiciary shall be adopted.[10]

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[10] This amendment which added a section (26) to the sixth article of the Constitution, created a commission of appeals to be composed of five members with power to hear and determine all pending appeals which might be transferred to it by the Court of Appeals. The amendment was adopted by the

The approach of the time when the people will have to determine whether a Constitutional Convention shall be called, ought not to operate against the proposed measure of relief. Should a convention be held, the delegates could not be chosen before the year 1867, and probably not less than two years will be required to frame a new system and put it in operation. If the proposed amendment should be perfected, the relief would be nearly immediate, as the commission might be enabled to commence its services during the present year.

THE ENROLLMENT AND THE DRAFT.

Congress, at its last session, passed an act for drafting citizens into the army. It wrought a change in the public feeling with regard to military service, and all, without respect to political views, tried to evade its operations. It has proved injurious to the civil, industrial and military interests of the country.

I called the attention of the President of the United States to the inequality in the enrollment. The wrong was partially corrected by reducing the numbers called for in those districts where they were excessive to the average number in the other districts of the State. New York is required to furnish more than other States in proportion to its population. This is shown by the following tables:

The average ratio of enrollment to the male population in the Western States, is.....	19	per ct.
In New Jersey.....	20	"
In Pennsylvania.....	18¾	"
In the New England States it is.....	17	"
In the State of New York it is.....	22	"

Legislature of 1864, and a bill was passed providing for its submission to the people at the next general election. The Senate journal shows that the bill was transmitted to the Governor on the 12th of April. The Legislature adjourned on the 23d, but there is no record of the Governor's action on this bill. The amendment was again adopted by the Legislature of 1865, and submitted to the people at the general election, but it was not approved.

Massachusetts, with ten Congressmen and a population of 1,231,066, has to furnish, under the recent call for 300,000 men	15,126
The first nine Congressional districts of the State of New York, with a population of 1,218,949, are called upon for	25,166
Excess in nine Congressional districts in New York over ten Congressional districts in Massachusetts	10,040
The quota of Vermont and New Hampshire, with a united population of 641,171, and six Representatives in Congress and four Senators, is	7,099
The quota of two Congressional districts in New York, the 4th and 6th, with a population of 283,229, is	7,628

It is not claimed that this inequality grows out of any deficiency of volunteers heretofore furnished by this State.

Messrs. James A. Bell, O. C. Kellogg and Wm. H. Bogart, at my request, called the attention of the Secretary of War to this subject. He promptly appointed William F. Allen, of this State, John Love, of Indiana, and Chauncey Smith, of Massachusetts, a commission to determine upon some fair mode for correcting these glaring inequalities.

The quota of this State under the draft, after deducting credit on former calls, was sixty-eight thousand men.

Number of conscripts examined	77,862
Number exempted for physical disability and other causes	53,109
Number who paid commutation	14,073
Number of substitutes obtained	6,619
Number of conscripts held to service	2,557

The failure of conscription, in comparison with volunteering, is shown by the results in this State.

Volunteers raised by State authorities from January 1st, to this date	25,324
Recruits sent to regiments in the field	1,653
Enlisted by Provost Marshals	11,060
Re-enlistments in the field (estimate)	10,000
Substitutes (volunteers in fact)	6,619
Enlisted by Provost Marshals since December 31.	1,500
	56,156
Total number of conscripts who were delivered at military stations	2,575

Like results are conspicuous in all parts of our State and in all sections of the country—in New England, Pennsylvania and the West.

By an arrangement with Col. Diven and Major Townsend, volunteering under the last call, except in the first ten districts, was conducted under the direction of committees for the several Congressional Districts, appointed jointly by the State and National authorities. In the first ten districts, including the cities of New York and Brooklyn, the whole matter was left in charge of Gen. Hays and the local authorities. I am not advised of the results in that part of the State, but in the other twenty-one districts the system adopted has been successful.

The attempt to fill our armies by drafting was abortive. While it gave no useful result, it disturbed the public mind, it carried anxiety and perplexity into the workshops, the fields, and the homes of our citizens.

It not only fails to fill our armies, but it produces discontent in the service; it is opposed to the genius of our political system; it alienates our people from the Government; it is injurious to the industrial pursuits of the country.

The difficulty in getting recruits is owing, in part, to the exhausting demands which have been made for that purpose. But it is also owing to other reasons; and among them attempted coercion is foremost. Congress attempted to keep up the number of men in the field without regard to State or local government, and it set aside those numerous minor local organizations, whose united contributions of men have made up our vast armies. By efforts to make itself independent of popular and local influences, the General Government impaired its power to get recruits.

It is asked why a draft should not succeed at the North as well as at the South? Our soldiers would cheerfully undergo the hardships not only of a coerced but of an unpaid service, if the condition of the country demanded these sacrifices. They would, as the soldiers of the South do, readily share in the privations of their fellow citizens. But, upon the same principle, they have a right to share in the prosperity of the community when so many are enriched by the operations of this war, and when those who stay at home enjoy unusual wages. While our Government and people are financially prosperous, our armies ought to be filled by bounties, and not by coercion. Government is bound in equal justice to give our soldiers the same pay which labor earns at home. Another difficulty is the depreciation of our currency. While farmers or merchants who sell, or the laborer who works for wages, avoids the depreciation by increased price of pay, the soldiers have lost one-third of the value of their pay; for the money they get is worth less by thirty-three per cent. than when the war began; hence their families are suffering.

When this cruel war is over and our soldiers return to the field or the workshop, their labor will be taxed with that of all other citizens to pay the debt it heaps up. Why should they not have a fair share of its expenditures? they will have to bear their share of payment.

The law of Congress was designed to keep up the number of men in the field with the least possible public expense. Its workings are the reverse of this. It has proved a levy upon property rather than a draft upon persons. The act of forcing citizens from their homes is repugnant to the feelings of the people. State, local and municipal governments have avoided such painful scenes by the imposition of heavy taxes and the payment of large bounties to volunteers. This will continue to be the effect of every attempt at coerced military service, and with still increasing taxation. Prior to 1862 our armies were mainly filled by those who accepted the usual pay and bounties of our soldiers. In 1862, when it was proposed to make a draft under State laws, the local and State bounties were about $100. Last year, under the Congressional act $300 were paid for volunteers in our principal cities. At this time, under the impending draft, the local, State and national, bounties amount to $660. These local bounties do not prevent the exhaustion of our national treasury. They are given by the same taxpayers who uphold the national credit. They are more oppressive upon the industry of the country than they would be if they made part of the national debt, and were thus more fairly diffused over the whole country. The ten millions paid to Government for commutations were taken from a class of men who could ill-afford to part with their small earnings. It was more hurtful to the country than a diffused tax for one hundred millions of dollars.

The expense of raising troops is also increased by the unexpected and irregular demands of the Government for soldiers. Within the past eighteen months the Government has made calls upon the country for more than 1,200,000, and upon this State for 248,000 men.

These demands, coming unexpectedly after great armies had been sent into the field, embarrassed the business of the country. Many who, with time to make preparations,

would have entered into the service, could not meet these unexpected requisitions. In addition to the confusion thus created, threatened drafts added to the popular excitement. Enormous bounties have been offered by States, towns and counties, in their anxious competition to get volunteers to avoid conscription.

Another flagrant evil incident to sudden and irregular calls, to be filled within short periods to avoid draft, is the opportunity afforded for heartless frauds, by which volunteers are entrapped into the service and cheated out of their bounties, because they are not advised of the advantages offered. Under a permanent and uniform system of volunteering, such outrages could not occur, as all classes would become familiar with its terms.

In keeping up our armies regard must be had to the industry of the people. If this is not done our military power will be destroyed. Our armies should not be allowed to run down until they are inefficient, and then be reinforced by convulsive efforts. These evils will be avoided if in the place of drafts and calls a permanent plan for recruiting is adopted and regiments kept up by a constant supply of recruits. The drain for men will be less hurtful, as it will make no sudden difficulties with the labor of the country. Reasonable bounties will induce volunteering; as time will be allowed to those disposed to enter the service to arrange their affairs without sacrifice. In addition to this continuous system of recruiting, the militia of the several States should be armed and equipped in the manner set forth in the National Constitution.[a] They will be a reserve force to be called out to check disasters or to follow up the advantages of war. While the existence of such militia would thus ensure success to military operations, they would not be hurtfully withdrawn from the industry of the country. They would uphold the laws in their respective

[a] U. S. Const. art. 1, § 8, clause 16.

States and be a security against invasion from abroad. If our State and National Governments had obeyed the requirements of their several Constitutions, there would be more than a million of organized militia in the Northern States. They would have checked this rebellion at once. The negligence and false economy which led the State and National Governments to disregard the warnings of our fathers upon the subject of arming and disciplining our people have been fearfully punished. Ohio and Pennsylvania would never have been invaded, nor would New York at this time be insulted by threatening attacks upon its border cities and towns, if the militia of the States had been kept up. Wise statesmanship and economy demand a return to this system. If this is done, and a judicious plan for recruiting is adopted, there will be no necessity for drafts.

The safety of our country demands that the sympathy between our citizens and our soldiers should be kept alive. Our armies should feel that they are upholding a just and paternal Government, which respects their personal rights, the happiness of their families, the sanctity of their homes. If soldiers are to be raised by coercion, in a little time the mass of our armies will be made up of conscripts. No one can look without concern upon measures which shall force half a million of men from their homes. Our soldiers in the field have been animated and sustained through the dangers and hardships of the war by the encouragement and sympathy they received when they freely went to battle for their country's honor. Would this be true of an army of conscripts? The army must not be estranged from our people. They must not feel that they do not enjoy a full share of the protection of laws or of the prosperity of the country. The natural tendencies of all compact organizations, removed from the relationships of society and home, are towards concentrated action. This action will tell directly upon the policy of the Government, as by the

laws of several States they are invited to vote in local and general elections in distant fields, in ways adapted to their organized and military condition there. A new influence, acting in an unusual form, is thus created in the conduct of affairs. A new fact exists in our system of government. While the President, as Commander-in-Chief, controls the army, the unanimous political action of the army will make the President. It is the part of wisdom to recognize every fact which tells upon the destiny of our country. It is folly to overlook the relationship which an army bears as well to political as to military affairs. Is it wise to destroy their sympathy with the body of our citizens, by forcing them into the field under circumstances of even apparent oppression, injustice or wrong? Must we not keep alive in their hearts the sentiment that their interests in the country as citizens are far more important than those which they hold as soldiers? Can this be done in any manner so effectual as to preserve with sacred care every personal right, to exalt in the public mind the sacredness of persons, the security of homes, the protection of laws, the independence of the Judiciary, the subordination of military to civil authority? Is such enforced service as the act of Congress contemplates, consistent with sentiments, without which the Government cannot stand or social order be preserved?

MILITIA.

A well regulated militia is necessary to the security of a free State. The events of the past year show that neglect of this truth has exposed us to dangers of invasion, to the disgrace of riots, and to the hazards of still greater calamities. Until recently our arsenals were bare of arms, and our State was not only without means to repel invasion, but it was also unprepared to execute its own laws. The city of New York, the great centre of all financial and commercial movements, has been, until recently, unprotected. Its destruction would have paralyzed the action of the gen-

eral government. The fortifications which were designed for its defence became its greatest danger. At any moment a few men could seize them, and with their armaments destroy the city and its shipping, with vast amounts of treasure, and of military and naval stores. To guard against such disasters, when I entered upon the duties of this office, I proposed to raise militia regiments which could be used to man these forts, and be drilled in the use of their heavy ordnance. Gen. Wool, who then commanded the Department of the East, at all times showed great anxiety to protect the city against sudden attack, but there were difficulties in the way growing out of laws of Congress and the rules of the War Department. Fortunately for our State and nation a few thousand men have kept up militia organizations, and have become skilled in discipline and the use of arms. This has been done without fair legislative support or public sympathy. On three occasions they have been called out to avert extreme peril threatened to the National Capital, and they can fairly claim that if they had not kept up their organizations, great and lasting dishonor would have been brought upon our country.

In June I received dispatches from the Secretary of War and the Governor of Pennsylvania, asking for assistance against the invasion of the forces under General Lee. Orders were immediately issued to the militia to march at once for the capital of Pennsylvania. Our militia are entitled to the credit of making one of the most prompt movements recorded in the history of this war. On the 2d day of July I received the following dispatch from the Governor of Pennsylvania:

HARRISBURGH, *July* 2, 1863.

TO HIS EXCELLENCY GOVERNOR SEYMOUR:

Send forward more troops as rapidly as possible, every hour increases the necessity for a large force to protect Pennsylvania. The battles of yesterday were not decisive,

and if Meade should be defeated, unless we have a large army, this State will be overrun by rebels.

A. G. CURTIN,
Governor of Pennsylvania.

More troops were immediately sent off in pursuance of this urgent appeal. The State has just reason to be proud of the services rendered by our militia. The correspondence with the General Government, and the reports of the officers in command of the militia on this occasion, will be submitted to you.

At the last session of the Legislature, the Governor, the Comptroller of the State, and E. D. Morgan were appointed commissioners for the purpose of taking such measures as they might deem necessary for the protection of the harbors and frontiers of this State.[11]

The harbor and fortifications at New York were visited and found open to attack by land and by armed privateers which were then burning our ships within sight of our coast. Government had withdrawn its troops, save an inconsiderable number, which could make no effectual resistance to any assault. Even the incomplete organizations of volunteer regiments which I had placed under the command of Gen. Wool for the purpose of defending the city, had been sent to the army to meet the invaders of Pennsylvania.

While the militia were thus absent from the city, and its forts and harbor unprotected, on Saturday, the 11th day of July, the draft, under the act of the last Congress, was commenced in one of the wards of the city. I was not advised of the step, and I believe the Mayor of the city was equally ignorant of the proceeding. A dispatch was sent to me by the Mayor of New York, informing me of a popular outbreak, on Monday evening, the 13th day of July, and

11 For report on harbor defences see special message of February 3.

on the following morning I reached the city and found it agitated with wild excitement and riotous violence. The militia were ordered to return immediately from Pennsylvania, and the following proclamation was issued:

TO THE PEOPLE OF THE CITY OF NEW YORK:

A riotous demonstration in your city, originating in opposition to the conscription of soldiers for the military service of the United States, has swelled into vast proportions, directing its fury against the property and lives of peaceful citizens. I know that many who have participated in these proceedings would not have allowed themselves to be carried to such extremes of violence and of wrong, except under an apprehension of injustice; but such persons are reminded that the only opposition to the conscription which can be allowed is an appeal to the courts.

The right of every citizen to make such an appeal will be maintained and the decision of the courts must be respected and obeyed by rulers and people alike. No other course is consistent with the maintenance of the laws, the peaceful order of the city and the safety of its inhabitants.

Riotous proceedings must and shall be put down. The laws of the State must be enforced, its peace and order maintained, and the lives and property of all its citizens protected at any and every hazard. The rights of every citizen will be properly guarded and defended by the chief magistrate of the State.

I do therefore call upon all persons engaged in these riotous proceedings to retire to their homes and employments, declaring to them that unless they do so at once, I shall use all the power necessary to restore the peace and order of the city. I also call upon all well disposed persons not enrolled for the preservation of order to pursue their ordinary avocations.

Let all citizens stand firmly by the constituted authorities, sustaining law and order in the city, and ready to

answer any such demands as circumstances may render necessary for me to make upon their services, and they may rely upon a rigid enforcement of the laws of this State against all who violate them.

HORATIO SEYMOUR, Governor.

New York, July 14th, 1863.

For the purpose of legalizing the most extreme exertion of force to put down violent resistance to law, I declared the city in a state of insurrection. It was divided into districts, which were placed under the control of persons of influence or military experience, who were directed to organize the citizens. Three thousand stand of arms were issued to these and other organizations. I endeavored by these arrangements to enable the police and the military to act against the masses of the rioters, and to relieve them from the fatigue of marching to distant points to check minor disorders.

To prevent the spread of violence I obtained from the Collector of the port the service of an armed vessel to traverse the rivers and bays in the vicinity of New York, and I also authorized the Police Commissioners to charter another steamer, which could be used to carry policemen and soldiers to any point on the shores or islands where disturbances were threatened.

The lawless acts which were excited by hostility to the draft, and which led to unjustifiable attacks upon the enrolling officers, excited the passions of those still more lawless, desperate and criminal. On the third day it became one of the most destructive riots known in the history of our country. Disregard for law produced its natural results, and life and property were endangered by acts of murder, arson and robbery. The firemen, with the most extraordinary efforts, checked the conflagrations which were kindled by incendiaries. The destruction of the asylum for colored children and murderous outrages upon a

helpless and unoffending race, were conspicuous among other acts of cruelty and wrong. For a time the existence of the commercial metropolis of our country was threatened.

In the sad and humiliating history of this event, it is gratifying that the citizens of New York, without important aid from the State or Nation, were able of themselves to put down this dangerous insurrection. I do not underrate the value of the services rendered by the military or naval officers of the General Government who were stationed in that city, or those of Gen. Sandford, for the public are under great obligations to them for their courage and prudent counsels. But they had at their command only a handful of troops, who alone were entirely unequal to the duty of defending the vast amount of public property which was endangered. The rioters were subdued by the exertions of the city officials, civil and military, the people, the police, the firemen, and a small body of only twelve hundred men, composed equally of the State and National forces.

It gives a gratifying assurance of the ability of the greatest city of our continent to maintain order in its midst, that it did so under circumstances so disadvantageous, against an uprising so unexpected, and having its origin in questions deeply exciting to the minds of the great masses of its population, and in a measure to which a vast majority of its citizens were opposed.

While elsewhere houses, churches and charitable institutions have been destroyed by mobs and incendiaries' fires, there are few, if any, cases where the local population and the civil power, with but little military aid, have put down an insurrection of such proportions by such decisive measures. The number killed and wounded is estimated by the police to be at least one thousand. The judicial authorities have also punished a large number of guilty parties. The report of the District Attorney will

be submitted to you. The return of some of the New York militia regiments secured peace to the city.

The inability of the Government at that moment to defend its forts and public property is stated in the following extract from a letter of General Wool, written about a week before these outrages occurred:

"Allow me to call your attention to the defenceless condition of this city. I have only five hundred and fifty men to garrison eight forts. One-half of these cannot be called artillerists, being very imperfectly instructed in any part of artillery duty. The Roanoke is ordered to proceed to Hampton Roads, leaving no vessel of war in the harbor or at the depot that can be available in less than ten days. The militia of this city and Brooklyn have either been or are being sent to protect and defend Pennsylvania, which is now paying dear for neglecting to take care of herself by guarding her frontier. Is it wise for New York, to follow her example by neglecting to protect the city of New York, the great emporium of the country, and of more importance to the Government than all other cities under its control? If I had a sufficient number of men to man our guns, I might protect the city from ordinary ships of war, but not from iron-clad steamers. In our present condition, for want of men to man our guns, the Alabama, or any other vessel of her class, might, without fear of injury, enter our harbor and in a few hours destroy one hundred millions of property. I have done all in my power to guard against the present condition of the city. The condition of the city is an invitation to rebels to make an effort to assail it."

Upon the receipt of this letter, I ordered the militia from the interior of the State to man the fortifications. Unfortunately, Gen. Wool was compelled to request me to countermand this order. This prevented the militia from being placed in the fort and from aiding to put down the riot. I submit the correspondence with him upon this oc-

càsion as well as that held with him during the preceding winter and spring.

In November I received information from the Secretary of War that an attack was to be made upon the frontier towns of this State by refugees from the South, who had congregated in considerable numbers in Canada. I issued orders to Major General Randall, commanding the Eighth Division, to hold the National Guards under his command subject to the orders of General Dix, for the purpose of repelling any assault. I do not know how much reason there was to fear any invasion of New York. The Colonial Government will probably prevent any movement of that kind. But does it become the honor or dignity of the State to allow five hundred miles of its frontier to depend for its security upon the vigilance or power of another nation? Many of our principal inland cities, our lines of canal and railroads, lie at short distance from this extended border. A few thousand men could in a few hours inflict a vast amount of injury upon our citizens, and destroy structures upon our canals and railroads which could not be replaced before great injury would be inflicted upon the commerce of the country. There are enemies enough upon our borders to strike blows whenever the negligence or changed feelings of the Canadian authorities shall allow them to act, and New York has not arms or military organizations to repel them. Our State can only be made secure by arming, equipping and drilling our militia. If this is not done it will be a criminal neglect of the best interests, honor and safety of the State.

The past year has been crowded with events, both civil and military, of the gravest interest. The establishment of a National Bank system; the issue of enormous amounts of paper money, which is made a legal tender; the adoption of a law for coerced military service; the act indemnifying and shielding officials charged with offences against the persons and property of citizens; the suspen-

sion of the writ of *habeas corpus* in peaceful and loyal communities, are measures which go far toward destroying the rights of States, and centralizing all power at the National capital.

The executive and military officials assume to declare martial law and to arrest citizens, where the Courts are in undisturbed operation, to try them by military tribunals and to impose punishments unknown to the customs of our country; to administer arbitrary test oaths; to interfere with the freedom of the press and with State and local elections by military decrees and the display of armed power.

The President claims the right to do acts beyond his civil jurisdiction and beyond the legislative power of Congress, by virtue of his position as Commander-in-Chief. In this assumption he is sustained by both branches of Congress, and by a large share of the people of the country. These proceedings of Congress and the action of the Executive and military officials have wrought a revolution. The civil power, the laws of States and the decisions of the Judiciary have been made subordinate to military authority. At this time, then, we are living under a military government, which claims that its highest prerogatives spring from martial law and military necessities. These acts have been sustained by the army and acquiesced in by the people. This revolution, if permanently accepted, must be recognized as an overthrow of established and cherished principles of government. Hereafter it will force itself upon the attention of the American people, who will then see and feel its nature and results. To their decision in calmer hours this subject must be referred.

If these measures of military, political and financial consolidation break down, their failure will show the wisdom of the Constitution in withholding from the General Government powers it cannot exercise wisely and well; and it will establish the rights of States upon a basis firm and un-

disputed, and will make the General Government strong by confining it to its proper jurisdiction. In the end we shall return to the principles from which we have been drifting.

In the meanwhile, we are threatened with other calamities which demand our immediate attention. The rights of the people and the restraints of the Constitution can be reasserted whenever the public shall demand their restoration, but it is beyond the power of the popular will to rescue us from the calamities of National bankruptcy or National ruin, when these have befallen us. The progress of events has brought us to a point where we are compelled to contemplate these calamities and to consider how they may be averted.

While it is a duty to state plainly my views about public affairs, I shall do so in no spirit of controversy or of disrespect for the opinions of those who differ from me. The questions of the day are beyond the grasp of any mind to comprehend in their influences or results. We see them from different standpoints and we reach conflicting conclusions. None but the ignorant, the bigoted or the designing will make these differences of views occasions for reproach or contumely. The times demand outspoken discussions. When we see good and earnest men, under the influence of some absorbing sentiment, overlooking the great principles of good government, trampling upon usages and procedures which have grown up with the history of liberty in the civilized world, we are warned that none of us can claim to be above the influence of passions or of prejudices. While I do not agree with those upon the one hand who insist upon an unconditional peace, or with those, upon the other extreme, who would use only unqualified force in putting down this rebellion, I demand for them what I ask for those who concur in the views which I present, a fair, dispassionate and respectful hearing. Let not the perils of our country be increased by bigotry, by partisan passions, or by an unwillingness to

allow opinions to be uttered in forms and modes in accordance with the usages of our people and the spirit of our laws.

Since the outset of the war the National Administration has asked for nearly two millions of men. To keep up our armies, the average annual calls have been for more than 400,000 men.

In addition to the loss of life, there has been a diversion of labor from peaceful and productive occupations to war, which destroys the accumulated wealth of the country.

The Secretary of the Treasury states the National debt will be sixteen hundred millions in July next. This does not include unascertained demands. In our former wars these latent claims have nearly doubled the liabilities supposed to exist during their progress. If the war should cease to-day, the National indebtedness could not fall short of two thousand millions of dollars. To this must be added the aggregate of State, county and town obligations. The cost of carrying on the war hereafter will be increased by larger pay to our soldiers, by interest accounts, by enhanced prices of provisions, transportation and material, growing out of a depreciated currency. The proposed issue of three hundred millions of paper money, under the National banking scheme, in addition to the vast sum now put out by Government, will add to the inflation of prices.

Conflicting views are held as to the amount of indebtedness which would cause National bankruptcy, and with regard to the length of time the war can go on without causing National ruin. All agree in this; that there is an amount of indebtedness which would overwhelm us with bankruptcy, that there is a duration of war which would bring upon us National ruin. The problem with which we have to grapple is: How can we bring this war to a conclusion before such disasters overwhelm us? These perils must be confronted.

Two antagonistic theories are now before the American

people for bringing to an end the destructive contest in which we are engaged. The first is that contained in the resolution adopted by Congress and approved by the President at an early day, and upon the faith of which the people of this country, without distinction of party, have furnished more than one million of men to our armies, and vast contributions to the treasury of our country.

This resolution consecrated the energies of war and the policy of government to the restoration of the Union, the support of our Constitution. It was a solemn appeal to the civilized world that the objects thus clearly set forth justified a war which not only concerned the American people, but which also disturbed the commerce and industry of all nations.

The opposite theory prevents the return of the revolted States upon the condition of laying down their arms; it denies them a political existence which enables them to come back upon any terms; it holds that States in the revolted section of the country must be "re-established;" that the States hereafter made may or may not hold names or boundaries of the States thus destroyed, although "it is suggested as not improper," that these names and boundaries, &c., should be maintained.

The war, therefore, is not to be brought to an end by the submission of these States to the Constitution and their return to the Union, but it must be prolonged until the South is subjugated to the acceptance, not of its duties under the Constitution, but of such terms as may be dictated. Until States are thus "re-established," it is held that there are no political organizations which can bring back the people to their allegiance; that if the nine States spoken of in the Proclamation of the President should lay down their arms, and should return to the performance of their duties, they would not be recognized nor received. This theory designs a sweeping revolution in the section of our country now in rebellion, and the creation of a new political system by virtue of executive decrees.

Is this calculated to stop the waste of blood and treasure? If the South is revolutionized, its property devastated, its industry broken up and destroyed, will this benefit the North?

Those who urge the restoration of the Union, and the preservation of our Constitution, contend that, in addition to upholding our armies and our navies, every measure of wise statesmanship and conciliatory policy shall be adopted to bring this war to a successful close.

Only the ends for which this war was begun should be sought; because they are the most easily attained, most beneficial when gained, and in their support the most varied, the most enlarged and the most patriotic influences can be exerted.

On the other hand, it is insisted that the war shall be prolonged by waging it for purposes beyond those avowed at the outset and by making demands which will excite a desperate resistance. A demand is made that the people of the South shall swear to abide by a proclamation put forth with reluctance, and which is objected to by a large share of Northern people as unwise and unjust, as it makes no distinction between the guilty and the innocent. They are to take an oath to which no reputable citizen of the North of any party will subscribe; that they will uphold any future proclamations relating to slavery. They are to submit themselves to uttered and unuttered opinions and decrees. No longer regarding the war as directed against armed rebellion, it is to be waged against people, property, and local institutions. It is held that the whole population within the limits of certain States are stripped of all political rights until they are purged by Presidential clemency.

The disorganization and destruction of the South are not to save us from the cost of war. The plan for the future government of the seceded States demands the maintenance of armies and a continued drain upon the persons and property of our people. Whenever one-tenth of the voters

of either of these States shall submit themselves to the conditions imposed, they may form new governments with new or old names and boundaries. This inconsiderable minority is to be supported in the exercise of power by the arms and treasure of the North. There will be no motives on their part to draw the remaining population into the support of the governments thus created. There will be every inducement of power, of gain and of ambition, to perpetuate the condition of affairs so favorable to individual purposes. It will also be for the interest of the National Administration to continue this system of government, so utterly at variance with a representative policy. Is not this the same mistaken theory upon which other nations have tried to govern their dependencies? Has complete subjugation for centuries produced the quiet, the obedience to law, the order, the security to life and property, the kindly feelings or the mutual contributions to prosperity which belonged to real peace?

Governments thus formed would represent not the interests of their citizens, but the wills and interests of the power that creates and sustains them. The nine States thus controlled would balance in the House of Representatives in the choice of the President and at all times in the Senate, New York, Pennsylvania, Ohio, Illinois, Indiana, Massachusetts, Missouri, Kentucky and Wisconsin, with a united population of 16,533,383, which is more than one-half of that of our whole country. The one-tenth who would accept the Proclamation for the price of power, would not only govern the States made by Executive decrees, but they would also govern the North. While the plan is harsh to the body of the Southern people, it is still more unjust towards the North. Fourteen hundred men in Florida would balance in the Senate of the United States the power of New York. Less than 70,000 voters in the nine States named in the President's proclamation, would wield a power sufficient to weigh down that of the nine most populous States in the Union.

We should thus have, with the nominal States of Eastern and Western Virginia, a system of rotten boroughs which would govern the Union, and destroy the representative nature of our government. This in connection with existing inequalities in State representation, would be a dangerous invasion of the rights of a majority of the American people. It would enable an administration to perpetuate its power.

It is a fact full of significance that every measure to convert the war against armed rebellion into one against private property and personal rights at the South, has been accompanied by claims to exercise military power in the loyal States of the North.

The Proclamation of Emancipation at the South, and the suspension of the writ of *habeas corpus* at the North; the confiscation of private property in the seceding States, and the arbitrary arrests, imprisonment and banishment, of the citizens of loyal States; the claim to destroy political organizations at the South, and the armed interference by Government in local elections have been contemporaneous events.

These acts at first were justified upon the ground that they were necessary to save the national existence. We now find that new and more extreme claims to arbitrary power are put forth when it is declared that the strength of the rebellion is broken and that our armies are about to trample out every vestige of its incendiary fires. More prerogatives are asserted in the hour of triumph than were claimed as a necessity in days of disaster and of danger.

The doctrine of Southern disorganization and revolution is a doctrine of national bankruptcy, and of national ruin; it is a measure for lasting military despotism over one-third of our country, which will be the basis for military despotism over the whole land. It does not contemplate the return of our soldiers to their families, or relief from the cost and sacrifices of war. It will make an enduring

drain upon our homes, and impose crushing burthens upon our labor and industry. It will open a wide and lasting field for peculation and fraud. It tends to perpetuate power by making and unmaking States, as the interests of factions may dictate. It will be a source of internal disorder and disquietude, and national weakness in our external relations. It will give dangerous allies to invaders of our soil.

If this war is to make a social revolution and structural changes in great States, we have seen only its beginning. Such changes are the work of time. If they are to be made by military power, it must be exerted through long periods. Whether white or black troops are used, the diversion from labor and the cost of war will be equally prolonged, and we have just entered upon a course of certain cost and uncertain results. No such changes as are now urged, have ever, in the world's history, been without struggles lasting through more than one generation of men.

What has Government accomplished in the territories wrested from rebellion by the valor of our armies? Has it pacified them? Has it revived the arts of peace? Have quiet and confidence been restored? Is commerce renewed? Are they not held as they were conquered — at the expense of Northern blood and treasure? Are not our armies wasted by holding under armed control those who, under a wise and generous policy, would have been friends? The spirit which prompts the harsh measure of subjugation has driven off many in the Border States, who, at the crisis of our country's fate, broke away from their ancient sympathies with the seceding States and clung to the Union. States which, by the elections of the people, ranged themselves upon the side of the Constitution, are not allowed the free exercise of the elective franchise. In some quarters discontent has been increased; in no place has the wisdom of Government gained us allies.

There is but one course which will save us from national

ruin. We must adhere to the solemn pledges made by our Government at the outset of the war.

We must seek to restore the Union and to uphold the Constitution. To this end, while we put forth every exertion of material power to beat down armed rebellion, we must use every influence of wise statesmanship to bring back the States which now reject their constitutional obligations. We must hold forth every honorable inducement to the people of the South to assume again the rights and duties of American citizenship.

We have reached that point in the progress of the war, for which all have struggled and all have put forth united exertions. Our armies and navies have won signal victories; they have done their part with courage, skill, and success. By the usage of the civilized world, statesmanship must now exert its influence. If our cause fails in the judgment of the world, it will be charged to the lack of wisdom in the Cabinet, and not to the want of bravery or patriotism in the army. The great object of victories is to bring back peace; we can now with dignity and magnanimity proclaim to the world our wish that States, which have long been identified with our history, should reassume their positions in the Union. We now stand before the world a great and successful military power. No one can foresee the latent victories or defeats which lie in our course if force, and force alone, is to be exerted. The past has taught us the certain cost of war and the uncertainties of its results.

In this contest belligerent rights are necessarily conceded to the South. The usages of international warfare are practiced in the recognition of flags and the exchanges of prisoners. Is it wise to put off the end of the war, and thereby continue a recognition which tends to familiarize the public mind in our own country, and in the world at large, with the idea that we are disunited into two distinct nationalities? A needlessly protracted war becomes disunion.

Wise statesmanship can now bring this war to a close, upon the terms solemnly avowed at the outset of the contest. Good faith to the public creditors; to all classes of citizens of our country; to the world, demands that this be done.

The triumph won by soldiers in the field should be followed up and secured by the peace-making policy of the statesmen in the Cabinet. In no other way can we save our Union.

The fearful struggle which has taught the North and South the courage, the endurance and the resources of our people, have made a basis of mutual respect upon which a generous and magnanimous policy can build lasting relationships of union, intercourse and fraternal regard. If our course is to be shaped by narrow and vindictive passions, by venal purposes, or by partisan objects, then a patriotic people have poured out their blood and treasure in vain, and the future is full of disaster and ruin.

We should seek not the disorganization but the pacification of that section of our country devastated by civil war.

In this hour of triumph appeals should be made to States, which are identified with the growth and greatness of our country, and with some of which are associated the patriotic memories of our revolutionary struggle. Every generous mind revolts at the thought of destroying all those memories that cling about the better days of the Republic; that are connected with the sacrifices of the men who have made our history glorious by their services in the cabinet, in the forum and in the field.

The victories which have given our government its present commanding position were won by men who rallied around and fought beneath the folds of a flag whose stars represent each State in our Union. If we strike out of existence a single State, we make that flag a falsehood. When we extinguish the name of any one of the original thirteen States, we dishonor the historic stripes of our Na-

tional banner. Let the treasonable task of defacing our flag be left to those who war upon our Government, and who would destroy the unity of our country.

Faith to our armies and to our citizens demands that we keep sacred the solemn pledge made to our people and to the civilized world when we engaged in this bloody war, "that it was not waged in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights of established institutions in those States, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease."

HORATIO SEYMOUR.

SPECIAL MESSAGES.

January 15. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *January* 15, 1864.

"In reply to the resolution of the Senate, asking for copies of the correspondence relative to soldiers belonging to this State, who have returned, and are about returning from the seat of war, I have to state that there has been no correspondence, except such as is hereinafter set forth.

By orders from the War Department, No. 376, dated December 15, 1863, the returning volunteers are directed to report, through the Governor, to the Superintendents of the Volunteer Recruiting Service. These are General Hays, Major Diven and Major Townsend. These officers arrange with the United States Quartermaster's Department for the necessary transportation and subsistence. In consequence of the return of several regiments to the principal rendezvous of New York and Elmira, and the collection of great numbers of enlisted men at the same points,

there has been a want of suitable accommodations, and great inconvenience and suffering. This is due to the fact that the Superintendents of Recruiting were not duly advised of the large numbers of recruits and of returning volunteers, who would require accommodations and subsistence at their hands. Although the subject is one over which I have no control, I deemed it my duty to do all in my power to correct the evils growing out of this state of affairs. I therefore ordered the following communication to be sent to the Secretary of War:

ALBANY, *January* 13, 1864.

Hon. E. M. STANTON, Secretary of War, Washington:

His Excellency, Governor Seymour, directs me to say that the depot for volunteers at Elmira is overflowing—the Provost Marshals of Majors Diven and Townsend's Division, have been directed to send no more men to Elmira, and volunteers all over the State are suffering for want of proper shelter. These facts have been telegraphed to Col. Fry by Major Townsend, some days since. The Governor earnestly hopes that not a moment may be lost in applying a remedy.

J. B. STONEHOUSE, A. A. Adj't Gen'l.

To which I received the following answer:

WASHINGTON, *January* 13, 1864.

His Excellency HORATIO SEYMOUR, Governor of New York:

The Secretary of War instructs me to say in reply to your telegram of this date, that an officer has been sent to Elmira to make a thorough investigation of the matters complained of, with authority to apply the proper correction on the spot.

ED. N. S. CANBY, Brig. Gen., A. A. G.

I do not doubt that the Superintendents of Recruiting will correct these evils, which are not chargeable to them.

The honor of the State, and the interests of the service, demand that our returning soldiers should be met with every evidence of a just appreciation of their patriotic services; and it is also important that those who enlist at this season of the year should have comfortable places of rendezvous. To guard against any possible failure to give to the returned volunteers a suitable reception, and to promote enlistments, I respectfully request the passage of a law, or of a joint resolution, which shall authorize me to expend such sums of money as may be necessary to secure these objects. In some instances no provision has been made for returned volunteers, and in many parts of the State enlisted men are suffering for want of proper quarters. The officers in command have been compelled to allow them to disperse, which involves the trouble and expense of recalling them to their several stations, and interferes with the recruiting service.[12]

HORATIO SEYMOUR."

January 22. To the Assembly: Transmitting the annual report of the Board of Commissioners of Metropolitan Police.

January 25. To the Assembly: Transmitting the report of the Health Officer of the Port of New York.

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[12] In response to the Governor's recommendation the Legislature adopted a concurrent resolution (in the Senate January 20, and in the Assembly March 4) providing that the "Governor, Secretary of State and Comptroller be authorized to take such action for the proper reception of the returning volunteers, and for the comfort and health of the recruits of the several rendezvous and places of enlistment, as they may deem proper and necessary; and to expend within the next three months such sums of money, out of the appropriation of two hundred thousand dollars of eighteen hundred and sixty-three, made for the relief of sick and wounded soldiers, not exceeding in all twenty-three thousand dollars, as may, in their judgment, be needed for these objects; provided that not more than eight thousand dollars shall be expended in any one locality."

January 29. To the Assembly: Transmitting a report of the reprieves, commutations and pardons.

January 29. To the Assembly: Transmitting a report of the chief of the bureau of military statistics.

January 29. To the Assembly: Transmitting resolutions adopted by the Legislature of West Virginia urging Congress to take measures for the speedy and adequate improvement of the navigation of the Ohio river.

February 1. To the Assembly: Transmitting the annual report of the Adjutant General.

February 1 and 2. To the Assembly and Senate respectively: Transmitting the annual report of receipts and expenditures of the Cooper Union.

February 3. To the Assembly: Transmitting the annual report of the quartermaster general.

February 3. To the Assembly: Transmitting the following report from the commissioners appointed under chapter 239, of the laws of 1863, relative to harbor defences:

"TO THE HONORABLE THE ASSEMBLY OF THE STATE OF NEW YORK:

The undersigned Commissioners appointed by chapter 239 of the Laws of 1863, in compliance with the resolution of your Honorable body, of which the following is a copy,

STATE OF NEW YORK:

ASSEMBLY CHAMBER,
ALBANY, *January* 12, 1864.

On motion of Mr. Read,

'*Whereas,* An act was passed during the last session of the Legislature, appropriating the sum of one million dollars, or so much of that amount as may be necessary for the purpose of protecting the harbors and frontiers of the State of New York against invasion, and to provide for

their defence, and appointed as Commissioners for that purpose the Governor, the Comptroller, and Hon. Edwin D. Morgan; therefore,

Resolved, That his Excellency the Governor be requested to communicate to this House, what measures have been taken by the aforesaid Commissioners for the protection of the harbor of the city of New York, and what portion of the sum thus appropriated has been expended on the same.

By order, J. B. CUSHMAN,
(Copy.) Clerk.'

submit the following statement:

That at the time of the passage of the act therein referred to, much apprehension existed in regard to our relations with the two great naval powers of Europe, and fears were entertained that a sudden attack might be made upon the city of New York, either by a foreign enemy or by some of the rebel privateers which were preying upon our commerce on the ocean. Immediate measures were therefore taken by the Commissioners to ascertain to what extent that city was exposed to such possible attack, and the best means of defence. A military officer of very high reputation as an engineer, and thoroughly conversant with the approaches to the city and their defences, was requested to communicate confidentially and without delay all the facts within his knowledge, together with his views upon the whole subject. This request was promptly complied with, and an elaborate and very valuable communication was laid before the Commissioners, which enabled them to proceed intelligently in the discharge of their duties.

A resolution was also adopted, authorizing Senator Morgan, one of the Commissioners, in case of any unexpected attack upon the city — where he resides — to take such instant measures for the defence of the harbor as he might deem necessary, with liberty to use the whole appropriation if required for that purpose.

Numerous plans and inventions for obstructions, floating batteries, submarine batteries, torpedoes, iron clad vessels, newly contrived guns and projectiles, were almost daily brought to the notice and urged upon the attention of the Commissioners. They were of the opinion, however, that it was not the design of the Legislature that the moneys placed at their disposal should be expended in making experiments with new and untried inventions.

The act authorized the Commissioners to purchase cannon, provide submarine batteries, iron clad steamers, and take such other measures as might be deemed necessary for the protection of the harbors and frontiers of the State. The protection of the harbor of New York was understood to be the main object of the act.

As all the forts and batteries which have been constructed or are in course of construction for the harbor, belong to the United States, and as it is the duty of the general government to protect its sea ports, it was apparent that to act efficiently the Commissioners must act in conjunction and harmony with the federal authorities. Communications were therefore had with the War Department, and Col. Delafield, the engineer in charge of the defensive works around the harbor, was directed to act with the Commissioners as consulting engineer.

Every facility in his power and all needed information was cheerfully afforded by him, and he accompanied the Commissioners in a thorough and careful personal inspection of all the forts and batteries at the Narrows, at Sandy Hook and upon the East River.

The result of this inspection, which was continued through three entire days, showed that everything which seemed to be necessary in the way of fortifications and effective armaments, was being supplied by the United States. A large force was employed upon the unfinished works, and guns of the heaviest calibre were being mounted.

When properly manned it is believed that these fortifications cannot be passed by any hostile vessel unless it be so heavily iron clad as to defy land batteries of any possible efficiency. But the achievements of our navy during this war, and the opinions of the ablest military and naval commanders, show that such iron clad vessels, propelled by steam at a high rate of speed, may pass the most powerful land batteries and that no harbor will be entirely safe against attack unless defended also by obstructions capable of arresting the progress of such vessels, and holding them for some time under the fire of the batteries.

It was therefore urged upon the Commissioners to give their attention to the subject of such obstructions, it being evident that with them, in connection with the fortifications and batteries, the defences would be as secure and perfect as human skill could well make them. Such was the judgment of the distinguished engineers and officers whose opinions were sought by the Commissioners.

Among other communications, a letter was laid before the Commissioners, written by Com. Porter to the Adjutant General of this State, dated on board the flag ship Black Hawk, near Vicksburgh, May 28th, 1863. After referring to a plan which he had previously proposed for the defence of the harbor of New York, the Commodore says:

'I am convinced, from late experience in these waters, that the plan I then proposed would be an efficient bar against the entrance of vessels of any size, provided there are twenty or thirty eleven inch guns placed to enfilade vessels attempting to pass the wooden floats secured with chains.

'I met a raft on Red River, 538 feet long and six feet deep, which would have barred the passage of our gunboats effectually had the enemy stood to his guns. It could not be blown up nor could we break it by ramming, and we had to saw it in pieces, which could not be done under fire.

'With such a system of floats as I proposed to the State Board, New York would be safe against all the fleets in the world.'

All the information and advice which the Commissioners could obtain were of the same purport, and went to show that the one thing and the only thing required in addition to what the Federal Government was doing, was the construction of some such floating barriers. Immediate measures were therefore taken to accomplish that object. An advertisement was published offering a premium of $300 for the best plan for such a barrier, $200 for the second best, and $100 for the third best.

In pursuance of this advertisement, fourteen different plans were presented. A board of engineers, consisting of Mr. Allan Campbell, Mr. O. W. Childs, Mr. W. H. Talcott and Mr. Edward H. Tracy, was formed to examine the plans thus submitted and to pass upon their relative merits. The plans were all submitted on or before the 18th day of July last, and on the 15th day of August the engineers made their report.

A plan which was deemed satisfactory having been decided upon, the Commissioners advertised for proposals to construct timber floats in accordance with it, and employed an engineer to take charge of the work. The form of proposals and the specifications are hereto annexed, and show the kind of barriers which were proposed to be constructed. A great number of bids were received for the work, but upon opening them they were all found to be so unexpectedly high, owing probably to the extraordinary rise in the prices of timber and iron, that the work could not be completed without the expenditure of a much larger amount of money than had been appropriated by the Legislature. In the meantime, the aspect of our foreign relations had become so much more pacific, and the danger of any hostile demonstration so remote, that it was not deemed

expedient to proceed with the work until the Legislature should have an opportunity to determine whether it would appropriate the further amounts which will be necessary to complete it.

Mr. W. W. Evans, the engineer employed to make the necessary drawings and to superintend the work, has made to the Commissioners a very elaborate report, covering the whole subject of harbor defence, and the importance of timber floats as a part of it. The Commissioners take the liberty of annexing his report hereto, and commend it to the careful attention of members of the Legislature. It contains carefully prepared estimates of the cost of barriers constructed according to several different plans. It will be seen that the lowest estimate at present prices, is $1,549,800, and the highest $4,951,800. This is for the Narrows; some obstructions, less expensive however, will be required at Fort Schuyler, on the East river.

Also, annexed are some extracts having an important bearing upon the general subject of harbor defence, taken from a very voluminous report made to the British government, in 1860, by commissioners appointed to consider the defences of the United Kingdom. This commission consisted of some of the ablest naval and military officers of Great Britain, and their examination was most thorough and exhausting.

Their report has been obtained for the Commissioners, and the extracts given embody some of their conclusions. The only expenditures made under the appropriation, have been for the necessary disbursements for advertisements, services of engineers, plans, drawings and expenses of the engineer's office.

The aggregate amount, without including the premiums which have not yet been paid up to this date, is $1,543.21.

The Commissioners have only to add what must be apparent to every one, that it is the manifest duty of the

federal government to provide these defences for the harbor of New York, and to suggest that some measures be taken to secure such action and to save the State from such an immense expenditure which, however necessary, ought not to fall upon its treasury.

HORATIO SEYMOUR,
LUCIUS ROBINSON."

Albany, February 2, 1864.

[The communications and other papers mentioned in the report will be found in Assembly Document, No. 83, 1864.]

February 3. To the Assembly: Transmitting the annual report of the Commissary General of Ordnance of the State.

February 4. To the Senate: Transmitting a special report of the inspector general under and pursuant to chapter 222, of the laws of 1863, 'to provide and repair arms and equipments of the militia of the State and for the public defence.'

February 8. To the Assembly:

ALBANY, *February* 8, 1864.

"I transmit herewith a communication from the superintendent of weights and measures of the State, calling attention to the necessity of a re-examination and re-adjustment of the national standard of weights and measures presented to this State by the Congress of the United States, and adopted as the State standard by act of the Legislature passed in the year 1851.

The importance of preserving a correct standard of weights and measures, whereby the several county and town standards may be tested, is deserving of your consideration.

I recommend the necessary legislation, either by concurrent resolution and an appropriation of moneys, to meet the necessary expense in the annual supply bill, or by the passage of a special act, to carry into effect the suggestions of the superintendent.

HORATIO SEYMOUR."

February 18. To the Assembly: Transmitting the annual report of the Commissioners of Public Accounts.

February 19. To the Senate: Transmitting a communication from the paymaster general stating that on account of lack of funds he would be unable to pay the State bounty to volunteers after that day.[13]

February 19. To the Assembly: Transmitting the annual report of the Surgeon General.

March 1. To the Legislature:

"ALBANY, *March* 1, 1864.

"In my annual message, in referring to the enrollment and the draft, I alluded to the inequality of the enrollment, as follows:

'New York is required to furnish more than other States

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[13] On the 17th of February, the Assembly adopted a resolution, which was concurred in by the Senate on the 19th, authorizing the Comptroller to borrow such sums of money as might be needed from time to time to pay the State bounty to men enlisted and enlisting in anticipation of the passage of the bill making the necessary appropriation therefor."

This was followed by an act, chapter 182, passed April 14, which made an additional appropriation of $3,000,000 for the payment of bounties for enlistments prior to April 1, 1864.

On the 22d and 23d of April, the Assembly and Senate respectively adopted a concurrent resolution that "if the amount of money already appropriated for the payment of State bounties to volunteers enlisting from this State, prior to the first of April, 1864, shall be found insufficient, the Governor is hereby authorized to borrow, upon the credit of the State, a sufficient amount to make up such deficiency, and cause the same to be paid as promptly as convenient to those volunteers to whom such bounties are due."

in proportion to its population. This is shown by the following tables:

The average ratio of enrollment to the male population in the Western States is....	19	per cent.
In New Jersey	20	"
In Pennsylvania	18¾	"
In the New England States it is.....	17	"
In the State of New York it is.....	22	"

Massachusetts, with ten Congressmen and a population of 1,231,066, has to furnish, under the recent call for 300,000 men.....	15,126
The first nine Congressional districts of the State of New York, with a population of 1,218,949, are called upon for	25,166
The quota of Vermont and New Hampshire, with a united population of 641,171, and six Representatives in Congress, and four Senators, is...	7,099
The quota of two Congressional districts in New York, the 4th and 6th, with a population of 283,229, is	7,628

'It is not claimed that this inequality grows out of any deficiency of volunteers heretofore furnished by this State.

'Messrs. James A. Bell, O. Kellogg and Wm. H. Bogart, at my request, called the attention of the Secretary of War to this subject. He promptly appointed William F. Allen, of this State, John Love, of Indiana, and Chauncey Smith, of Massachusetts, a commission to determine upon some fair mode for correcting these glaring inequalities.'

This commission, composed of two citizens of other States with one from the State of New York, have come to an unanimous conclusion that the enrollment for the State of New York, under the act of March 3, 1863, was 'imperfect, erroneous and excessive,' especially so with reference to the cities of New York and Brooklyn.

The commission, after due consideration, recommend, in view of the inaccuracies of the enrollment, that the quota of 60,378 men alloted to this State, under the call of the President of October 17, 1863, be reduced to 52,858, with a corresponding reduction under the call of February 1, 1864.

I am happy to state that I have received information from Washington, that the quota of this State, for the calls of 500,000 men, has been reduced, as recommended by the commission — such reduction amounting to between 13,000 and 14,000 men.

In a crisis like the present, the saving of so many men to the industrial interests of the State, should not be lightly estimated. The labor of 13,000 men distributed throughout the State, will afford great relief, especially in the rural districts, where farm laborers are now, with difficulty, obtained.

While the State pays a bounty of $75 to each volunteer, local bounties vary from $300 to $600 per man. In a financial point of view, this reduction, therefore, results in a saving of at least five million of dollars to the people of New York.

It is gratifying to me to be able to bear testimony to the aid received, in the adjustment of the matter at Washington, from several Senators and a number of Representatives in Congress.

It is also due to the Secretary of War, to state that he has shown a willingness to do justice to the State of New York in this matter, by the appointment of an able and impartial commission.

The following extracts from the report of the commissioners, show the views held by them:

'The commission, after a full investigation, and in view of all the facts elicited, are unanimously of the opinion that the enrollment in the State of New York is imperfect and erroneous, excessive in some districts, and possibly too

small in others, and certainly excessive in the cities of New York and Brooklyn, and especially as compared with other States, and cannot be relied upon as a just and equitable basis for the assignment of the quota of the State of New York, or among the several districts thereof. Justice to the enrolling officers and agents, requires that it should be distinctly stated, that their fidelity or integrity is by no means impeached by any inaccuracies that may exist in the enrollment. They were the necessary result of the execution of the law under the circumstances, and with the means at the command of the officers, and it is not perceived how they could be avoided.'

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'In conclusion, the commission are of opinion, and so report, that the quota assigned to the State of New York, and the quotas assigned to the several districts of the cities of New York and Brooklyn, are erroneous and excessive, and should be reduced.'

HORATIO SEYMOUR."

March 1. To the Assembly:

Returning for correction a bill entitled "An act to amend the charter of the Sing Sing Savings Bank" [14] and a bill entitled "An act to amend an act entitled 'An act to incorporate the Portchester Fire Department,' passed April 10, 1855.'" [15]

"The first section of the bill amendatory of the charter of the Sing Sing savings bank, proposes to amend the sixth line of section six of the act of the year 1854, incorporating said bank, as amended in 1859.

The first section of the bill amendatory of the act incorporating the Portchester fire department, passed in the

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[14] The Sing Sing Savings Bank bill was corrected, passed again and became a law, chapter 62, on the 25th of March.

[15] The Portchester Fire Department bill was corrected, passed again and became a law, chapter 63, on the 25th of March.

year 1855, amends the eighth line of the second section of said act, and the second section of said bill amends the ninth line of the seventh section of said act of 1855.

It becomes a question of importance to be determined, whether the amendments proposed to be made to certain lines refer to the lines in the original engrossed laws on file in the office of the Secretary of State, or to the printed volumes of Session laws.

If to the former, a reference thereto, would doubtless be proper, though conflicting with the printed laws, in the numerical order of the lines.

An examination at the office of the Secretary of State, of the two engrossed laws sought to be amended, however, reveals the fact that the words mentioned in the bills herewith returned, do not occur in the lines therein enumerated.

A system of amendatory legislation by referring to a printed volume of laws, should not be introduced in our statute books.

When a section or portion of a law is sought to be amended, it is far safer to repeat the entire section as proposed to be amended, than merely to refer to a certain line, or to strike out certain words occurring therein, and inserting or adding others."

March 3. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *March* 3, 1864.

"Since the passage, by the Congress of the United States, of the enrollment act of March 3, 1863, much anxiety has been felt by citizens of this State, relative to the quotas assigned to the several towns and cities of the State, under the several calls of the President for volunteers.

Thus far, only one draft has been actually made by the General Government under this act, and it is now understood that the result of this draft is to be credited upon

the last call of the President for volunteers, bearing date February 1, 1864.

The desire to fill the quotas of the respective towns and cities has, since the passage of the enrollment act, led to active exertions in the procurement of volunteers, and large local bounties have in many localities been offered in addition to the State and General Government bounties.

Localities taxed to raise local bounties make every effort to obtain credit upon their respective quotas for all new volunteers, re-enlistments and enlistments in the regular army.

The clerical force in the Adjutant General's office has been inadequate to enable that official to open books of credit with the several towns, cities, counties, and Congressional districts of the State, for men furnished to the service.

Local, county, city and town committees are constantly visiting the Adjutant General's office for the purpose of examining the rolls on file, as to the enlistment of new recruits, re-enlistments in the field, and enlistments for the regular service.

In the absence of books showing local quotas and credits, this is the only method of obtaining the information sought.

By constant handling, many of the rolls have become mutilated, and hardly legible.

In addition to the value of these rolls for the purposes named, they may eventually be the only evidence whereby disabled soldiers or the families of deceased soldiers will be enabled to draw back pay or receive pensions.

I respectfully ask your early consideration of this subject, and that the necessary appropriation be made to enable the Adjutant General to employ the force requisite to transcribe the rolls into books of credit with the several Congressional districts of the State.

HORATIO SEYMOUR."

March 12. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 12, 1864.

"I transmit herewith a communication from the Inspector General of the State, relative to the payment of accounts for preparing alphabetical lists of volunteers, pursuant to general orders No. 79, issued from the Adjutant General's office.

HORATIO SEYMOUR."

March 12. To the Senate: Transmitting the report of the auditing board, constituted by chapter 397 of the laws of 1862—"to provide for the payment of certain claims incurred in the organization, equipment and subsistence of troops raised in the State of New York or received therefrom, for the service of the United States.

March 31. To the Assembly: Transmitting the annual report of the treasurer of the Sailors' Snug Harbor.

April 20. To the Assembly: Transmitting the report of the board of managers of the New York State Soldiers' Depot, established under chapter 224, laws of 1863. The act authorized the Governor to appoint agents "whose duty it shall be to provide additional means of relief for the sick, wounded, furloughed and discharged soldiers of this State, who shall have been, are now or may hereafter be engaged in the United States service, while being transported to and from their homes; to ascertain the names and condition of all patients, belonging to this State, in United States hospitals, within such limits as the Governor may designate; to keep a register of the same, and to furnish information to all who make inquiry concerning them; to facilitate the removal of the bodies of deceased soldiers to the friends of such deceased when such action is desired, and to perform such other duties for the relief of the sick and wounded soldiers of this State as the Governor may designate." The act appropriated $200,000.

April 20. To the Assembly: Transmitting the report of the General Agent of the State for relief of sick, wounded, furloughed and discharged soldiers.

April 21. To the Assembly: Transmitting a communication from the Paymaster General relative to the payment of bounties to volunteers. See Assembly Document, No. 183. [See note 13.]

April 22. To the Senate: Transmitting the annual report of the Inspector General.

April 22 and 23. To the Assembly and Senate respectively:

"EXECUTIVE DEPARTMENT,
ALBANY, *April 22d*, 1864.

"My attention has been called to a concurrent resolution which has passed both branches of the Legislature, in the following words:

'*Whereas,* all the stocks issued by this State were made payable and negotiable in this State, therefore

'*Resolved,* That no distinction should be made between the foreign and domestic holders of such bonds as to the currency in which the principal and interest should be paid.'

To the principle laid down in this resolution, in terms, there can be no objection offered. All the creditors of the State, whether they be of our own people or foreign, should be alike paid; paid promptly and in full all that was promised them.

The Legislature, last year, adopted a concurrent resolution on this subject in the following words:

'*Resolved,* That the interest accruing on so much of the State debt on the first day of April as was on the first day of March, eighteen hundred and sixty-three, held by persons residing out of the United States, and is still held by them, be paid in gold or its equivalent.'

And the appropriation was made for the purchase of coin to an extent sufficient to enable the Comptroller to pay in gold the interest on the stocks of New York held by persons residing abroad; and only to that extent. Although the resolution of last year did not, in terms, forbid the payment of the interest due to our creditors residing in this country in coin, yet the absence of any appropriation for the purposes obliged the Comptroller to forego such payment.

In practice, a distinction was thus made between the non-resident and the resident creditor. We kept faith with the stranger who had trusted us; we broke faith only with those of our own household.

The effect of the resolution of this year, in the absence of any appropriation, will be, that no part of the interest will be paid, as it was promised to be paid, to wit, in coin or its equivalent. When we sought the markets of the world with our securities, we pledged ourselves to redeem them in the currency of the world. The partial neglect of plighted faith last year is now to be followed by an open refusal to pay any of our promises according to their plain sense. The disgrace of last year was limited; it was kept within ourselves; now our shame and dishonor are to be borne in the face of the world.

I look upon this matter as of so much moment to the welfare and to the character of New York and of its people that I feel constrained to ask you to give the subject a reconsideration; and to urge you to pass a concurrent resolution that shall enable the Comptroller to pay all the interest which may fall due before the next session of the Legislature, in coin. In this way your resolution of this year can be carried into effect, consistently with the good credit of the State and 'no distinction' will 'be made between the foreign and domestic holders' of the bonds. If you do not do this, let me urge you to provide, at least, for the interest that is due to residents of other countries being paid in coin.

The refusal to pay in coin to our own citizens may justify itself to some minds, although not to mine, as a measure of quasi taxation; special, discriminating and unfair but excused by our present extraordinary condition. In dealing with our creditors in other countries no such considerations can come in. We have over them no legitimate power of taxation; these creditors of ours have no voice nor part in our political action; we have no claim upon them that they should take a share in the misfortunes that befall us in our career. They are not of our household, nor bound to take part of our domestic calamities upon themselves. The burdens and the misfortunes of this war belong to us; it is ungenerous to shift any portion of them upon others who are not a part of us. These foreign creditors of ours are strangers who lent us their money when we wanted it; upon no security but our word of honor. If we do not pay them back their money to the strict letter of our bargain, we incur a shame that can never be removed from us. We deprive New York of an element of strength which heretofore has been wisely used and which its people have found profitable, to wit, its unquestioned credit.

Principle and policy unite to urge the action I recommend to you. It is the only way in which the State can, in truth, fulfill its contracts. It is the only way in which the State can keep itself in a position to go into the market hereafter decently as a borrower.

The State is even now in the market for money to pay its bounties to volunteers. The whole amount of the appropriation I urge upon you will be more than repaid in the first negotiation the State may make, by the enhanced price of its securities. We shall lose more in our immediate transactions than the cost of providing the coin for this interest. Not only our future profit but our immediate gain will be served by adhering now to the strictest letter of our contracts. The saving proposed by not paying in coin is small and temporary, while the dishonor is lasting,

and the pecuniary loss, consequent upon this dishonor, will be, in the end, enormous.

Bad faith on the part of New York, the leading member of our Confederacy, must, inevitably, weaken very greatly, if it do not destroy the credit of our government securities in foreign markets. Compared with the importance of this State's action in its effect upon the credit of the government the cost of paying our interest in coin is insignificant.

Aside from the consideration of interest or policy, our duty, in my judgment, is plain; it is to pay the debts of the State; to pay them in precisely the mode in which they were promised to be paid; to keep the honor of the State unsullied; and to this plain duty we should be true, cost what it may.[16]

HORATIO SEYMOUR."

April 23. The Legislature adjourned without day.

[16] See 1863, special message of March 31, and note 11, interest on state debt, *ante*, pp. 490–493.

REUBEN E. FENTON, Governor.

ANNUAL MESSAGE.

EXECUTIVE CHAMBER,
ALBANY, *January* 3, 1865.

TO THE LEGISLATURE.—Alike gratified and grateful at the evidence of the material prosperity of the State, as well as with the increasing manhood, self-reliance and patriotism of the people, as shown in the progress of our country, in its great struggle for nationality, I enter upon the discharge of the duties of the high station with which I have been clothed.

The Constitution makes it the duty of the Governor to "communicate by message to the Legislature, at every session, the condition of the State, and to recommend such matters to them as he shall deem expedient."[a] In compliance with this requirement, I shall in this, my first communication to you, give the "condition of the State" as I find it, upon examining the various reports I have obtained from the different departments, and shall recommend only those matters for your action which seem to me to be of greatest present importance, leaving for future attention such other measures as may from time to time claim consideration.

PUBLIC CHARITIES.

The munificent grants, from time to time, of preceding Legislatures, made in a spirit of enlightened benevolence, aided in some instances by private endowments, have established a system of public charities in this State, to which we may point with becoming pride. To the subjects of

[a] Const. 1846, art. 4, § 4.

P. E. Pinlan

almost every class of diseases, misfortunes and infirmities, are offered special asylums, where, with the best medical aid and superintendence, the greatest opportunity is offered for relief or cure.

I herewith transmit to you the reports of the Superintendent of the Asylums for the Insane, the Deaf and Dumb, the Blind, the Idiotic, and the Inebriate, showing the present condition and needs of each of these institutions.

The suggestion in the report of the Medical Superintendent of the State Lunatic Asylum, as to the propriety of repealing the law which provides for sending insane female convicts from the State prisons to that institution, is deserving of your consideration.[1] It will be observed that the great rise in the price of articles of consumption, and for service performed, will necessitate increased appropriations to maintain these various institutions in their greatest efficiency.

The Legislature of 1864 directed an investigation into the condition of the insane poor, confined in the various county poor houses. A report by Dr. S. D. Willard will be duly presented, showing the deplorable condition of this most unfortunate class. There are in fifty-five counties, not including New York or Kings, thirteen hundred and forty-five lunatics confined in poor houses and poor house asylums, nearly all of whom are incurable. Many have become, and others are fast becoming, incurable from inefficient care and treatment. The time has arrived when legislative provision for them should be made. The propriety of establishing an institution for incurables, an institution that shall relieve county authorities from the care of the insane, should be deliberately considered. More than one-fourth of this class of insane are capable of some labor. To what extent that labor, organized and systematized,

1 Chapter 353, passed April 10, prohibited sending female insane convicts to the State Asylum at Utica, and required the transfer of such convicts from that asylum to one of the State prisons.

might be made productive in the maintenance of an institution, under well directed medical superintendence, is likewise worthy of consideration.[2]

Let me also call your attention, as citizens and legislators, to the increasing demand for benevolent action growing out of the great struggle in which the nation is engaged. The call of our country in its hour of need has met with a noble response from the able-bodied, self-sustaining citizens, and there have been left a greater proportion than usual of women, children, aged and infirm, in a condition of indigence and helplessness. Their claims upon us for assistance are not those of charity alone, but they may rightfully demand our sympathy and aid in the name of that patriotism which inspired the sacrifices that deprived them of their natural protectors.

Notwithstanding the liberal provisions made by the Federal Government to those whose cases can be brought within the general rules by which its bounties and pensions are disbursed, there must be a large number of persons thrown directly from the camp and battle-field upon the charities of States, communities and individuals. These brave veterans are in poor condition to accept for all their sacrifices the simple honors of a nation's gratitude. They must be fed, clothed and warmed. Much has already been done in this direction. Vast sums of money have been contributed to the various soldiers' relief associations and in private charities, showing how thoroughly every Christian, philanthropic and patriotic impulse is enlisted, as well as how inexhaustible are our resources when the sympathies and interests of the people are awakened; and it only requires that these efforts should be organized to give them permanence, when they will become the crowning glory of our institutions.

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2 The Willard Asylum for chronic insane was established by chapter 342, passed April 8, which authorized the appointment of commissioners to select a suitable site for the asylum. The act appropriated $75,000. The asylum was located at Ovid, Seneca county.

The military State agency, and the soldiers' home, established by act of the Legislature in 1863, may be regarded as military charities, and mentioned in this connection. I cannot speak authoritatively of what has been done, as no report of their operations has been received. But the public position which I have occupied since the present war began, has afforded me facilities for learning the value of such instrumentalities. The soldier does not easily, nor should he be allowed to, relinquish his State pride and ideas of local citizenship, and I can assure you, from personal observation, how grateful to the hearts of these brave, patriotic men, are these evidences on the part of the State of its appreciation of their services, and interest in their behalf. This field of operations is necessarily somewhat independent and varied, and perhaps the beneficent dispensations connected therewith being left to the Governor and his agents, more wisely and efficiently reach the wide and changing necessities of the soldier in the camp and hospital, or on the battle-field, than if governed by fixed general rules. Fully alive to the considerations due those who brave exposure, sickness, wounds and death in maintaining the integrity of the nation, it shall be my special aim to give to these agencies their greatest efficiency.[3]

BANKING AND CURRENCY.

The annual report of the Superintendent of the Banking Department shows that there were two hundred and ninety-five banks conducting the usual business of banking on the 30th of September, 1864, with an aggregate capital of $107,306,948, and that sixty-two banks were closing their business voluntarily and through insolvency.

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[3] The Legislature responded to the Governor's suggestion in part by enacting chapter 15, on the 2d of February, "to provide additional means of relief for the sick and wounded soldiers of the State of New York in the United States service." It authorized the Governor to appoint agents to obtain information concerning sick and wounded soldiers and provide for their relief. The act appropriated $200,000.

The total amount of outstanding circulation issued by that officer at that date was $40,118,635, of which sum $5,584,084 was issued to safety fund banks, under special acts of incorporation, and not required to be secured by any deposit in the Bank Department, and $34,534,551 was issued to banking associations and individual bankers, secured by

Bonds and mortgages	$2,944,071.00
Stocks of State of New York	16,093,740.10
United States stocks	17,839,950.00
Stocks of the State of Illinois	327,400.00
Cash	98,362.95
Total	$39,303,524.05

There has been, during the year, an increase of United States securities of $2,042,100; and a decrease of stocks of our own State $1,349,400; of bonds and mortgages $918,-026.47; of circulation $738,103.

I am informed that there are now in existence and in operation in this State one hundred and two national banks (seventy-seven of which were organized since January 1, 1864) with an aggregate capital of $21,113,800, and with an amount of circulation issued of $13,134,200; and also that the number of State banks that have been changed to the national system, included in the above statement, is twenty-four.

The banking system inaugurated by this State, and perfected under its laws, has resulted in furnishing a currency of unquestioned safety. The essential features of this system have been adopted by Congress in the "Act to provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25, 1863. Thus the benefits which our own citizens have derived from a secured bank

circulation, will under the more extended jurisdiction of Congress, be enjoyed by the people of other States. Numerous banks have already been established under the National Currency Act, and appearances indicate that the whole banking circulation of the country will be issued by institutions organized under that law and subject to its salutary provisions. The interests of our citizens cannot fail to be subserved by the introduction of a general currency based upon ample security, receivable for the public dues, and redeemable at convenient points. The fears and prejudices which were at first aroused by the extension of a general system of banking, under the auspices of Congress, seem to be rapidly passing away, and many of the banks organized under the laws of this State, are taking initiatory steps towards reorganizing under the National Currency Act. Under these circumstances, it would seem to be the dictate of wisdom on the part of the Legislature, to grant such facilities for the change, as shall be within its constitutional power. The existing laws are undoubtedly ample for the protection of the outstanding circulation issued by them as State institutions, but the change to National Banks cannot be effected save through a tedious process. An act that should throw the sanction of law over the transition from State to National institutions, and that should render the change more expeditious and with as little disturbance as practicable to business relations, would, it is confidently believed, be productive of beneficial results, not only as relates to the institutions to be affected thereby, but to the community at large. A law having in view the object to which I have adverted, was passed at the last session of the Legislature, but failed of going into effect through the want of Executive approval. I commend the subject to your early attention.[4]

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[4] The Governor's recommendation as to national banks was embodied in chapter 97, passed March 9, "enabling the banks of this State to become associations for the purpose of banking under the laws of the United States." By the act the Legislature assented to the organization of national banks in the State, and specifically declared that all banks theretofore or thereafter organized under the national banking act should be deemed a "banking

FINANCES.

General Fund. The Comptroller's report shows a deficiency in the revenue of the General Fund on the 30th day of September, 1864, of $863,814.67. This deficit is less than existed on the 30th day of September, 1863, by over $300,000, as will be seen below.

Deficiency in the revenue, September 30, 1863	$1,192,787.77
Payments of the year	7,458,563.46
Total	$8,651,351.23
Receipts	7,787,536.56
Deficiency September 30, 1864	$863,814.67

OTHER FUNDS.

Balance due the treasury, September 30, 1863	$534,289.16
Payment of the year on account of all the funds except the Canal Fund	10,820,807.78
Total	$11,355,096.94
Receipts	11,270,093.17
Treasury overdrawn September 30, 1864	$85,003.77

institution for all financial transactions of the government of this State, and any and all officers thereof, the same as if organized under and in pursuance of the general banking laws of this State." The act contained provisions relative to the procedure on changing from a State bank to a national bank, and regulated the status of the bank after such transformation.

A similar bill was passed in 1864 on the day before the Legislature adjourned, and ordered sent to the Governor. The records do not show any formal veto of the bill by Governor Seymour, but it was not approved.

The act of 1865 was held unconstitutional in part in Van Allen v. Assessors (1865), 3 Wall. 573, reaffirmed in New York v. Tax & A. Comrs. (1876), 94 U. S. 415; and in First Nat. Bank v. Fancher (1872), 48 N. Y. 524.

GENERAL FUND STATE DEBT.

Amount of debt September 30, 1863.....	$6,519,654.37
Stock reduced during the fiscal year.....	240,700.00
Amount of debt September 30, 1864..	$6,278,954.37

State Tax. There was levied 1864 a direct tax of 5¼ mills for the following purposes:

¾ of a mill for schools; 1¼ mills for general purposes; 1 77-80 mill for bounties; 48-80 of a mill for canals, and 3-16 of a mill for the Albany and Susquehanna railroad.

The aggregate proceeds of the State tax levied in 1863, and payable during the last fiscal year, were $6,143,704.03, exclusive of the ¾ mill tax for school purposes.

CANALS AND CANAL FUNDS.

Statement for the fiscal year ending with the 30th of September, 1864, namely:

RECEIPTS AND PAYMENTS.

Balance in the treasury and invested October 1, 1863.....	$6,915,617.21
Received during the year.....	5,061,176.24
	$11,976,793.45
Payments.....	4,809,231.97
Leaving a balance on Sept. 30, 1864, of	$7,167,561.48

REVENUES FOR THE FISCAL YEAR.

Received from tolls.....	$4,308,781.20	
Received from rent of surplus waters and interest on current revenues, etc..	37,484.32	
		$4,346,265.52

EXPENSES.

For collection, superintendence and ordinary repairs	$1,028,909.46
"Surplus revenues"	$3,317,356.06

The surplus revenues have been applied, under direction of the Constitution, as follows:

Transferred to the Sinking Fund, under art. 7, sec. 1, of the Constitution	$1,700,000.00	
Transferred to the Sinking Fund, under art. 7, sec. 2, of the Constitution	350,000.00	
Transferred to the Sinking Fund, under art. 7, sec. 3, of the Constitution	1,116,242.66	
Transferred the remaining surplus to the Fund for support of Government	151,113.40	
		$3,317,356.06

Statement of the Canal Debt, paying interest on the 30th September, 1864.

	Principal.	Am. in. of.
Under art. 7, sec. 1, of the Constitution	$7,906,224.76	$434,253.48
Under art. 7, sec. 3 of the Constitution	11,736,000.00	696,800.00
Under art. 7, sec. 10 of the Constitution	442,585.49	24,629.28
Under art. 7, sec. 12 of the Constitution	2,243,000.00	134,580.00
	$22,327,810.25	$1,290,262.76

The gross earnings of the canals from the close of the fiscal year 1860, to September 30, 1864, four years, were $17,722,384.84. After paying the expenses of superintendence, collection and ordinary repairs for the same period, $3,279,976.44, there was a net balance of surplus revenues amounting to $14,442,408.40. From this sum there has been appropriated to the Canal Debt Sinking Funds $10,824,570.14; to the funds for the extra repairs and improvements of the canals, for land damages and other claims against the State, growing out of the enlargement and completion of the public works $1,666,724.86; to the General Fund, on account of interest on the General Fund Debt, and for the support of the Government, $1,951,113.40, making altogether $14,442,408.40.

The amounts carried to the credit of the Sinking Fund have been applied, so far as necessary, to the payment of the interest and principal of the canal stock debt. On the 30th of September, 1864, the balance in all the Sinking Funds, in the aggregate, was $6,022,609.90, constitutionally pledged to the payment of the interest and principal of the canal debt. It is a matter of pride and gratification that since the close of the fiscal year in 1860, this debt has been reduced $4,779,511.23.

The Auditor of the Canal Department reports that there are now outstanding and unsatisfied claims against the State, including interest to the date when payment can be made from funds now to be provided by taxation, amounting to $586,329.59. These claims are founded upon awards by the Canal Appraisers for lands taken for public uses, and upon awards by the Canal Board, under special acts of the Legislature. I recommend that provision be made for the payment of these claims at the earliest period practicable.[5]

The Auditor estimates that there will be a deficiency in

[5] Chapter 85, passed March 6, appropriated $586,330 for canal awards and unpaid estimates for canal construction with interest.

the canal tolls the current fiscal year, owing to the very large sums needed for the repairs and maintenance of the canals, to an extent that will render additional aids to the Sinking Fund, under article VII, section 3 of the Constitution, necessary to enable the State to preserve the public faith towards its creditors. The claims upon the fund will be for interest upon the $12,000,000 debt for the next fiscal year, and whatever the deficiency may be, it must be supplied by deficiency loans upon the credit of the fund, or by equitable taxation.

We should not, in my judgment, borrow money to pay the interest on the public debt. The disposition and ability of the people to bear the burdens of the hour, and discharge occurring liabilities and demands upon them, is a gratifying evidence both of their patriotism and prosperity. The practice of paying debts, instead of borrowing to pay, should be observed by governments as well as by individuals, and especially should the rule of prompt payment of interest on debt from ordinary resources or taxation never be departed from except in unexpected emergencies. Notwithstanding the heavy burdens of taxation, the people in all the industrial pursuits exhibit a comparative increasing prosperity. It may not be improper to refer, at a time when so much solicitude is felt as to the strength and resources of the loyal States, and the prosperity of the people, to the share which New York State has in making up the aggregate of these resources.

The contest forced on the people for national existence is severe, yet the magnitude of the means it has developed, and the strength it has shown the loyal States to possess, exceed all our calculations. We may, with just satisfaction, point to the leading facts of our prosperity, when the purpose to be served is to strengthen and encourage the patriotic impulses of the people, and to sustain them in the discharge of duties which often involve great hardships and trials. The sacrifices they are called on to make will not

be considered in vain when the national strength develops itself in such unexpected proportions, and seems to defy the demands of this gigantic war.

The geographical position of our State is such that it has at all times drawn to its ports, and carried over its interior lines of transportation, the greater share of the foreign commerce and of the interior exchanges of the United States. This concentration of trade has increased since the war began in consequence of the closing of the Southern ports, and the stoppage of trade on the Mississippi, and not only has this tendency been more decided, but, in addition, the volume of all classes of trade, foreign and domestic, has been greatly enlarged contrary to the predictions of the enemies of the Union, and to the surprise of most of its friends. The chief seaport of the country has increased its business both in foreign and domestic commerce more rapidly than at any previous time, and the great lines of transportation have nearly doubled the quantities of produce carried through this State to the seaboard since 1859, and the greater proportion of the increase has been subsequent to 1860, or during the years of actual war.

The public works of the State, now more decidedly than ever before, indicate the wisdom of their founders, and the great railroad lines find their capacities taxed to the utmost with only occasional interference with the canals.

The report of the Auditor shows a falling off in the revenue of the canals for the fiscal year, but this may be the result of the anxiety of the people to reach the markets with their produce in the quickest possible time while prices are ruling high. Oftentimes their interests will be promoted by paying the higher rates of railroad transit, with the view of seeking a market which to-day is buoyant, and to-morrow may be depressed. Hence large quantities of produce have been diverted from the canals to these speedy lines of communication, thus swelling their business, as

their annual reports exhibit. It is not doubted, however, that the transit of internal commerce will find its accustomed channel when the circumstances which have operated temporarily to control it, are at an end.

The tonnage of produce going eastward on the Erie canal, derived from the Western States and the Canadas, rose from 1,034,763 tons in 1859, to 2,594,837 tons in 1862. During the years from 1859 to 1864 inclusive, the two great railroad lines carried eastward the following aggregates of both through and way freight:

Year.	Central Railroad. Tons.	Erie Railroad. Tons.
1859	570,927	.....
1860	730,258	.....
1861	881,028	827,807
1862	1,064,128	972,332
1863	1,044,259	1,088,109
1864	1,557,148	1,332,954

With such conditions attending the very crisis of the great national trial, as regards the activity of trade, and the quantities of staple articles produced in the interior and sent through and out of the State for exchange at its commercial center, it is reasonable to assume the stability of the large interests confided to our charge within the State, and to place the most implicit reliance on the power of the country to sustain the exhaustion of war.

Turning from this internal movement to the foreign trade conducted at the port of New York, we find it increasing during this critical period quite as rapidly. The exports more than doubled from 1859 to 1863, and the imports which were previously greatly concentrated at that port were fully maintained.

These facts are important and significant, as I before remarked, from their relations to the dangers in which the country is involved. They afford the amplest assurance, also, of the great and permanent value of the public works,

which are the property of the State, and that they may be relied on as a permanent and productive basis of revenue. The Western producing States are especially benefited and aided by the public works, and experience has fully shown that the great natural channel of the St. Lawrence river, though open to almost unrestricted use for the United States produce shipments outward, withdraws but a small percentage of this Western trade.

The increased business of the State in manufacturing and other industrial pursuits has kept pace with the advance before described, but it cannot be made the subject of equally definite statement. The evidences of this manufacturing activity are everywhere abundant. It has caused an increased consumption of many products of the State, and by so much has had a tendency to create the appearance of decline in such products, when in fact a substantial increase occurred.

Such are the contrasts which encourage the people under the trials which they have by their patriotic energy controlled to their advantage when it was asserted that the result would be the ruin of their industry and their commerce.

AGRICULTURE.

Everything which pertains to the cause of agriculture is of the utmost concern to all. The productions of the earth from tillage are the chief resource of our prosperity in times of peace, and upon their abundance the support and effectiveness of our armies are dependent in time of war. It is with great satisfaction, therefore, that I extract from the report of the Corresponding Secretary of the State Agricultural Society the information that the agricultural interest of the State is in a flourishing condition, and that the recruiting of the armies, which affects this interest more, perhaps, than any other, has not seriously diminished its productions, the introduction of labor-saving machinery having, in a great degree, compensated for the lack of men engaged in manual labor.

I am informed that an application will be made to you in behalf of the Agricultural College. This institution has been closed since 1861, for want of means to carry out the design of its foundation. A most generous offer of endowment has been recently made by a distinguished citizen of the State, on condition that the Legislature shall make a grant to it from the income of the public lands. I doubt not you will consider this offer and take such action thereon as the nature and importance of the subject may demand. It is certainly desirable that this institution may be speedily enabled to enter upon its appropriate and valuable sphere of usefulness.[6]

CODIFICATION OF THE LAWS.

The codification of the laws of the State, which was initiated under the State Constitution of 1846,[b] and pursued under various acts of the Legislature since that time, has been in charge of two boards of commissioners, who have co-operated in the task. I am informed that all the codes, as prepared by the commissioners, will be ready for examination and adoption during your present session. The Political and Penal Codes will be ready to submit immediately

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[6] Cornell University was established by chapter 585, passed April 27. The University was to be located in Ithaca, Tompkins county. The object of the university was to "teach such branches of learning as are related to agriculture and the mechanic arts, including military tactics; in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." The trustees might also include other branches of learning.

The act appropriated to the university the proceeds of the sales of land granted to the State by an act of Congress, approved July 2, 1862, which donated certain public lands to the several states and territories which might provide colleges for the benefit of agriculture and the mechanic arts. Under this donation New York received 990,000 acres. The appropriation of this land to the university was on condition that Ezra Cornell should make an absolute gift to the university of $500,000 within six months, and should also give $25,000 to the Genesee College located at Lima.

[b] Art. 1, § 17; art. 6, § 24.

on your assembling, and the Civil Code very soon afterwards.[7]

COURT OF APPEALS.

I would also call your attention to the subject of the resolutions for an amendment of the Constitution, so as to create a Court of "Commissioners of Appeals" to aid the present Court of Appeals in disposing of the business which has accumulated in that Court. Those resolutions have been passed by two successive Legislatures (see session laws of 1864, page 1347), and an act providing for their submission to the people, as required by the Constitution,[c] was passed by the last Legislature, but for some reason failed to receive the approval of my predecessor. It is true that under section 2d, article XIII of the Constitution, we may have a convention to revise the Constitution in 1867, yet with the present condition of the business now before that court, I think the commission should be created, as it will be confined in its action (as will be seen by the resolution), to appeals pending when the amendments shall take effect, and hence will not be continued longer than to perform the unfinished business. I am informed that there is now five years business, and by 1867, with the present organization alone, there would be seven or eight years business in arrear, upon the calendar of the court. This delay is not attributable to any want of industry in the judges, as they have done all which men could do to dispose of the cases. It is owing, undoubtedly, to an insufficient judicial force. Long delays in the decision of legal controversies (especially commercial questions, which constitute a large portion of the business of the court), is not

[7] These codes were prepared by a commission appointed under an act passed in 1857, and extended in 1862. The Political Code was presented to the Legislature in 1860, and the Penal and Civil Codes in 1865. The Penal Code and the Code of Criminal Procedure were enacted in 1881. Other codes included in the plan contemplated by the act of 1857 were passed by the Legislature at different times, but failed to receive executive approval.

[c] Const. 1846, art. 13, § 1.

only annoying and injurious to the parties, but a reproach to free government. I renew the recommendation of my predecessor, for the passage of a law at the earliest day, submitting the above mentioned resolutions to the people.[8]

METROPOLITAN POLICE.

I can do no more in this message than merely call your attention to the able report of the Metropolitan Board of Police of the cities of New York and Brooklyn, which is herewith submitted. It makes startling developments of the increase of crime, and the jeopardy of life and property in those great cities, and suggests much radical and amendatory legislation, to the end that justice and order may be more effectually promoted.

CENTRAL PARK.

The Central Park, in the city of New York, is approaching completion. Its management has been fortunate enough to secure the cordial support of the people of the city, and the results already developed have been such as justly to commend it to the regard of citizens of all parts of the State. The beauties it displays, which are to be increased, indicate for it a marked influence upon the health and pleasure of the people of the city, and that it will be widely useful to the whole country for example and instruction in all the arts that are so well illustrated in its progress.[9]

IMMIGRATION.

The number of alien emigrants who arrived at the port of New York, during the year, from January 1st to Decem-

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[8] The amendment providing for a commission of appeals was, by chapter 13, passed February 2, submitted to the people at the general election in 1865, but was not approved.

[9] Chapter 26, passed February 10, provided for the improvement, maintenance, regulation and government of Central Park. The act created a "Central Park Improvement Fund," to be constituted from the proceeds of stock issued by the city in an amount the annual interest on which might be a sum not exceeding $100,000. The act also regulated the administration of park affairs.

ber 31st, was 182,766, showing an increase over the year 1863 of more than 25,000, and being as large a number as for any year since 1854. The fund under the control of the Commissioners of Emigration is created by a *per capita* tax of two dollars for each alien, and while during the year there was a great advance in the cost of all supplies required for the support of the emigrant institutions on Ward's Island over the preceding years, yet the economy with which the affairs of the Board is administered, as well as the increased arrival of emigrants, has enabled the Commissioners to carry into effect a long cherished design in the erection of a series of new and improved hospital buildings. The cost of these buildings, which it is said will be ready for occupation in the spring, will be about $300,000. For further information I refer you to the annual report of the board.

STATE PRISONS.

The Inspectors of State Prisons report that there has been a constant decrease in the number of inmates of these institutions. There were remaining on the 30th of September, 1864, in all the State prisons, including the female prison at Sing Sing, and the asylum for insane convicts at Auburn, 1,802 convicts, of whom 158 were females. There is an increase of female convicts, and the Inspectors state that the female prison has an excess of inmates and recommend that the Legislature provide for the confinement of female convicts from the western part of the State, in some institution in that section.[10] The cash receipts at

[10] Chapter 584, passed April 27, required the State Prison Inspectors to remove from the female prison at Sing Sing all convicts from the seventh and eighth districts, except those whose terms would expire within three months and those convicted of murder, manslaughter or arson. Convicts from the seventh district were to be placed in the penitentiary at Rochester, and those from the eighth in the penitentiary at Buffalo. Thereafter women convicted in either of these districts of state prison offences, except murder, manslaughter or arson, were to be sentenced to the penitentiary in such district.

all the prisons during the past year compare favorably with the previous fiscal year.

Amount received into the treasury from Sing Sing	$116,526.91
Amount received into the treasury from Auburn	119,350.65
Amount received into the treasury from Clinton	43,074.50
Total	$278,952.06

The expenses during the same period have been:

At Sing Sing	$186,951.31
At Auburn	104,625.45
At Clinton	80,332.78
Total	$371,909.54

The high prices prevailing for all materials and supplies have caused the expenditures to be relatively larger than usual.

The Inspectors in their annual report, discuss the question of discipline, labor, expenditure, and other topics of interest, in connection with the prisons.

In regard to Clinton prison, they report that they have found it difficult to secure favorable contracts for the labor, and submit to the Legislature the question as to what shall be done with the prison, the convicts, and the labor, in the event of there being no demand for work of this character at that place. The annual inventory shows the value of the property owned by the State at this prison to be $454,871; of which a large per cent. is in machinery. It is desirable to make this property productive, and if practicable, to meet the expectations of Northern New York, by continu-

ing to maintain the prison there. To meet the case, the Inspectors suggest that an immediate appropriation be made for procuring a stock of materials, to the end that the convicts may be kept profitably employed.[11] As directly affecting the financial management of the prisons, however, and the general policy of the State with regard to them, I submit this, together with other important questions relating to the finances and discipline of the penal institutions of the State, to your early attention.

The Prison Association of New York, which is not only authorized, but required by its charter, to visit, inspect and examine all the prisons in the State, and annually to report their condition to the Legislature, has, during the past year, pursued its appropriate work with extraordinary diligence. Special attention has been given to the county jails, and inquiry has been made into the general administration of penal justice, the sources of crime and the relations of insanity to what would be criminal action in persons of sound mind, and results both interesting and instructive have been reached through their investigations.

The report of the Association to be submitted to the Legislature, will present facts and suggestions touching the condition of our prisons, the working of our prison system, the methods and measure of the reforms needed therein, and the proper treatment of the criminal insane.

All these matters relating to prisons, prison discipline and reform, are worthy of your careful consideration.

CENSUS.

The Constitution of the State requires that a census shall be taken during the present year,[d] and the Secretary of State will, at an early day, submit for your action his views

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[11] By Chapter 43, passed February 25, convicts in Clinton prison who were not in the service of contractors were to be employed in the manufacture of iron and working of iron into manufactured articles.

[d] Const. 1846, art. 3, § 4.

of the changes necessary to be made in the existing law, to adapt it to the present condition of affairs. The results of the coming census will be awaited with interest, and it is believed the population of the State will be shown to have largely increased since the last enumeration. I think I am warranted in assuming this by the votes cast at the late election, as compared with previous years. Thus, in 1860, the whole number of votes was 675,156, while in 1864 the number was 730,712, with many soldiers and sailors absent from the State under circumstances precluding their exercise of the elective franchise. Estimating the number so absent at 20,000, the calculated excess of population in 1864 over 1860 is 437,000, an increase of over ten per cent. on the total of 1860, and it will be seen that the population of the State, calculated on the ratio of the increased vote, attains to 4,307,616, at the close of the year 1864.[12]

EDUCATION.

The report of the Superintendent of Public Instruction shows our schools to have been, during the year, in a prosperous condition. Notwithstanding the extraordinary demands occasioned by the war, upon the attention and resources of our people, it is apparent that there is no diminution in the interest manifested in the progress of public education, or in the fidelity of school officers in the discharge of their duties.

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12 A decennial census had been provided for by the general act of 1855, Chapter 64, which was intended to be self executing, and under which an enumeration would be taken regularly as required by the Constitution without application to the Legislature, and under which other statistical information would be obtained. The Legislature of 1865, by Chapter 34, passed February 16, amended this act in a few administrative particulars, but without affecting its general character. Under the new law the persons taking the census were to be called "Enumerators" instead of "marshals" as under the former law.

The following brief summary is gleaned from the records of the Department, and from the Commissioners' reports:

RECEIPTS.

From Common School and United States Deposit Funds	$320,000.00
Avails of the ¾ mill tax	1,090,841.11
Voluntary taxation in the school districts	2,668,079.29
Rate bills	429,892.52
Gospel and School lots	18,412.57
From other sources	56,031.99
Total	$4,583,257.48

EXPENDITURES.

For supervision (rural districts)	$56,000.00
For teachers' wages	3,093,460.46
For libraries	26,890.51
For apparatus	137,613.49
For building and repairs	647,301.23
For colored school	30,468.33
Miscellaneous	614,036.64
Total	$4,605,770.66

Number of children in the State between the ages of five and twenty-one	1,307,822
Number of children who have attended school at any time during the year	881,144
Teachers employed at the same time for six months or more	15,801
Whole number of male teachers	5,707
Whole number of female teachers	21,754
Total number of school districts	11,459
Total number of school houses	11,457

Whole number of months school	82,727
Number of months school taught by qualified teachers	82,389
Average number of months school	7½
Number of volumes in district libraries	1,111,438
Number of pupils attending the Normal school during the year	299
Number of teachers instructed in Teachers' Institutes	7,349
Classes in academies	1,683
The amount of money to be apportioned by the Superintendent of Public Instruction, for the support of common schools for the current fiscal year, is	$1,445,749.90

The consolidated act in regard to public instruction, passed last May, is regarded favorably, and the mode therein provided for the apportionment of public moneys, is causing a large increase in the number of pupils at the schools, and in the daily average attendance. To give full force and effect to that act, and to increase parental solicitude for the proper instruction of the young, the propriety of making more ample provision for an annual supply of thoroughly qualified teachers is suggested. Creditable provision for this purpose has already been made in the Normal School, teachers' classes in the academies, teachers' institutes, and the Oswego Training School for primary teachers; but these, as now supported, are manifestly inadequate to supply so great a demand.[13]

I desire to repeat the suggestion made by my predecessor, urging upon the public the duty of a proper recognition of the important services of the teachers, on whose intelligence and fidelity the welfare of their children in such great measures depends.

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[13] Chapter 445, passed April 14, increased the annual appropriation for the Oswego training school from $3,000 to $6.000. For further action relating to normal schools, see 1866, note 5, *post*, p. 695.

The higher institutions of learning are in a condition of continued prosperity. The report of the Regents of the University shows an increased attendance, both in the colleges and academies of the State, over that of the previous year. When we consider the number of young men who abandoned their studies at the call of the Government, and the great drain on the labor of the country, this result is most gratifying. The means of education were never more earnestly sought, or more liberally provided.

ELECTIVE FRANCHISE.

I desire to call your attention to the importance of guarding and protecting the elective franchise, by such laws and regulations for its proper exercise as will insure its purity and vigor. The Constitution gives to every American citizen of proper age and qualifications, the right to free suffrage, and makes it the duty of the Legislature to pass such laws as may be necessary to ascertain by "proper proofs," the persons entitled to enjoy it.[e] The cardinal principle enunciated in the Declaration of Independence, that "all true Governments derive their power from the consent of the governed," can best be guaranteed and perpetuated by the healthful exercise of this most sacred privilege. While it is of the utmost importance that all who have a constitutional right to exercise the elective franchise should have every facility for so doing, it is of equal consequence that those who have not this right, be debarred therefrom, and that frauds and abuses of all kinds should be detected and punished. The present law for the registration of voters has, no doubt, been of great utility in protecting the purity of the ballot box, but still I am persuaded it falls short of accomplishing the entire object for which it was framed. Coming, as you do, from all parts of the State, and each knowing the practices and abuses of his

[e] Const. 1846, art. 2, §§ 1, 4.

particular locality, the proper remedies will suggest themselves to your minds, and you will be able to adopt such measures as I hope will tend to do away with the existing evils, of which so great complaint has been made.[14]

Before leaving this subject, I would call your attention to the act of last session, whereby citizens absent from the State in the military and naval service, were authorized to participate in our elections.

The object of this law meets my hearty approval. If there is one class of men in the country more than another, whose rights to the elective franchise should be protected, and to whom the greatest facilities in its exercise should be secured, it is that portion who exchanged the comforts of home for the duties of the camp and the battle field, and who are separated from the associations and interests so intimately and affectionately blended with the former, while watching over and guarding the public liberty and our individual safety in the hour of peril. While the purpose of the law referred to was undoubtedly to secure this high and just privilege to the persons in question, I am convinced that, in its practical operation, it is liable to great abuses. I recommend the subject to your most earnest attention, with entire confidence that your good judgments will suggest such amendments to the existing statute, as shall put it beyond the power of evil-disposed persons to perpetrate fraud under it.[15]

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[14] The registration of voters was provided for by chapter 740, approved May 13. It applied specifically to New York and Brooklyn, and elsewhere to election districts which included any part of a city or incorporated village.

[15] Chapter 570, passed April 27, repealed the soldier vote act of 1864, chapter 253, and enacted new provisions on this subject. Chapter 657, approved May 1, 1865, appropriated $10,000 to carry into effect the provisions of chapter 570.

The Civil War terminated during the summer of 1865, and nearly all of the soldiers were discharged and returned to their homes before the November election in that year. The soldier vote act of 1865, chapter 570, was repealed in 1866, by chapter 524. Another act on this subject was passed in 1898, during the war with Spain.

MILITARY.

During the past year, according to the Adjutant General's Report, the State of New York has sent 161,614 men into the field, and from the 15th of April, 1861, to the 1st of December, 1864, as appears from data supplied by my predecessor, the State furnished 437,701 men to the Government, including the credits under the draft of 1863; of this number 409,426 entered the Army and 28,275 the Navy. I suppose, however, that the number of men reported as above to have been sent into the field, includes the militia who were called out for a brief period of service.

QUOTAS OF 1864.

There were three calls for volunteers by the President, in 1864. The quotas under those of February and March, were filled before the first of July, and on that day there stood to the credit of the State an excess of 5,251 men, to apply on the subsequent call. The quota under that of July has also been filled, as is shown by the following general summary:

Quota under call of February 1, 1864.....	81,993
Quota under call of March 14, 1864.....	32,794
Quota under call of July 18, 1864.....	89,318
Total quota of the State for 1864.....	204,105

To meet these are:

1. The excess of credits over all calls prior to 1864, as appears by the account current between the United States and the State of New York, on December 31, 1863.....	51,420	
2. Men sent into the field in 1864.....	128,161	

3. Naval enlistments prior to February 24, 1864	28,275	
4. Deductions from quotas on corrections of enrollment, say	1,550	
		209,406
Leaving excess on credits December 1, 1864		5,301

The naval enlistments included above are of those who entered the sea service between April 15, 1861, and February 24, 1864, but who were not previously credited on the quotas of the State, nor of localities.

I desire to say in this connection that I deem it of the utmost importance to the efficiency and good discipline of military bodies, that the commanding officers should be men of moral character and the best military attainments. The appointment of all commanding officers, up to and including the rank of colonel, devolves upon the Governor.[f] In all cases where promotions become necessary, I shall make it a rule to appoint according to previous rank and meritorious services in the field.

MILITARY STATISTICS.

The Bureau of Military Statistics, under the supervision of its able chief, has continued to prosecute its inquiries during the past year with success. Its collections already embrace invaluable records and memorials, and while each day adds to their interest, so do its collections increase in extent and in practical usefulness. Connected with the Bureau is a fire-proof repository for returned battle flags, trophies, and other evidences of the valor of New York's heroic sons in the present war.[16]

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[f] Const. 1846, art. 11, § 3.

[16] By chapter 690, approved May 11, 1865, the name of the Bureau of Military Statistics was changed to the Bureau of Military Record. The act also provided for the administration of the bureau.

BOUNTIES AND RECRUITING.

The matter of maintaining the armies of the Union, in a condition for successful military operations has been and still continues to be of the gravest moment to the country, and has called upon the people to exercise a spirit of sacrifice and patriotism unequaled at any former period. There has already come upon us a further call for 300,000 men, and it is but reasonable to expect that, should the war continue, there will, from time to time, be further calls for troops, to fill the vacancies occasioned by the expiration of terms of service, and from other causes. The experience of the past year in procuring men, and the operation of the system of raising bounties, suggest matters for careful consideration. Under the present laws, towns and sub-districts are authorized to raise bounties, without any limit as to the amount, for the purpose of filling a quota under an actual call, but cannot raise them with a view to obtaining volunteers to apply on future calls which may be made. The operation of this law is such that during the interval between the filling of one quota and the call of another, no effort is put forth and no men are enlisted. The result is that large numbers of men have to be raised in a very limited time, and, under the excitement and competition, localities are constantly overbidding each other, while the men who intend to volunteer hold back until this competition shall have realized for them the highest possible offers. The bounties thus actually paid to volunteers are very unequal, and are often the cause of dissatisfaction among the recruits after they have entered the service. In view of these facts, I would respectfully submit whether it would not be well to so amend the law as to fix the maximum amount which each locality could raise by legal taxation, and enable them to raise and pay these bounties with a view to future contingencies.[17]

[17] Several bounty acts were passed at this session: chapter 29, passed February 10, provided for State bounties on enlistments under the Presi-

RECRUITS FOR TWO YEARS REGIMENTS.

Some, perhaps most, of the recruits for the two years regiments of this State enlisted under the belief that they would be released at the expiration of the term of the regiment. In many instances recruiting officers so assured them. But, as is well known, instead of being permitted to leave the service with the regiments in which they first entered, they were held to the terms of their muster, or for the full period of three years. There are yet a few of this class in the field, and, without referring to its legal aspect,

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dent's call of December 19, 1864, and under any subsequent call. The act refunded certain local bounties, and prohibited local bounties except under specified conditions. The act authorized a State debt of $30,000,000 for bounties. The act was to be submitted to the people at the next general election.

Chapter 41, passed February 24, substantially re-enacted chapter 29, with the provision that it should become a law on its passage, but should not take effect until the canvass of the votes on the submission of chapter 29.

Chapter 56, passed February 27, imposed a tax of 2% on the taxable property of the State for the purpose of raising money to pay the bounties authorized by chapter 29, but with the proviso that the tax should not be imposed if chapter 29 should be approved by the people. In that event, the amount appropriated by the first act, $30,000,000, was to be borrowed by the Comptroller and bonds issued therefor.

Chapter 226, passed March 29, was in many particulars substantially a re-enactment of chapter 56, with further provisions intended to carry into effect the statute providing for the bounty debt. The new act also imposed a tax of 2%, but with the proviso that it should not be levied if chapter 29 should be approved.

Apparently the method of submitting to the people the question of a State debt provided for in previous acts was deemed insufficient, for chapter 325, passed April 7, contained specific provisions for the submission of the question in a form and manner prescribed by the Constitution, including the submission itself and the imposition of a tax to provide for the payment of the debt if authorized by the people. The act repealed sections 8, 9, 10, 11, 12, and 13 of chapter 29, which related particularly to the creation of a debt, and the submission of the question to the people.

The bonding act was approved by the people at the November election in 1865. The Comptroller's records show that bonds amounting to $27,644,000 were issued under this act. See Governor Robinson's annual message of 1878, in which he congratulates the State on the payment of the bounty debt, amounting in all, principal and interest, to $43,270,337.47.

Chapter 29, section 4, military bounties, was sustained in Powers v. Shepard (1872), 48 N. Y. 540.

I recommend that a suitable presentation of the case be made by you to the General Government, to the end, that, so far as practicable, any substantial cause of complaint in this regard be removed. These two years regiments were raised under the direct authority of the Legislature, and were specially accepted by the President, and I conceive that a rule which properly applies to recruits in other regiments may except these from its operation.

NATIONAL GUARD.

The report of the Adjutant General, with reference to the National Guard, shows, at the last inspection, the following:

Total force	45,910
Divided into regiments	108
Battalions	2
Batteries	5

New organizations formed during the year:

Regiments	23
Battalions	2
Batteries	3
Companies created	235

The number of commissions issued to the officers of the National Guard, as reported to me, is 1,865. Five thousand uniforms have been issued through the Quartermaster-General's office.

The biennial enrollment of the militia, as far as completed, shows 314,308 men.

It is apprehended that many organizations of the National Guard are very incomplete, and of little available efficiency. I shall institute an immediate investigation of its condition, and if anything is necessary to complete or create a more perfect system, I shall make it the subject of future communication.

There is no right of the citizen more sacred than that of bearing arms, and no duty more imperative upon freemen than that of being prepared at all times to resist aggression. A constant preparation for war is a great conservator of peace. The federal Government has justly enough assumed to itself the right of raising troops to put down this rebellion. Experience shows, however, that the consequences of war are not confined to the struggle of grand armies on historic battle fields. War engenders a spirit of mob violence, lawlessness and disregard of life. A complete military organization enlists at once every able-bodied loyal citizen on the side of order, and creates a constabulary force of such strength as to discourage outbreaks against the peace of the community, and capable of dealing summary punishment when they appear; it renews to the citizen on each review day the grand traditions of the race, gives rise to more exalted feelings of personal responsibility to the Government, and cultivates in the minds of the whole people chivalrous sentiments of national honor, such as ever characterize those who are made familiar with the thought of facing death in defence of their rights.

On our northern frontier a band of desperadoes have recently been, and it is feared are still organized within the jurisdiction of a professedly friendly government, threatening raids, guerilla attacks and robbery upon our peaceful citizens. We can scarcely expect the Federal Government to maintain, on this extended frontier line of 500 miles, a cordon of bayonets to protect us from the vagrants who threaten us. But the commonest instincts of self-defence, and the dignity of the State, demand that we should be at all times prepared to defend ourselves.

The importance of a thoroughly organized State militia, in maintaining the nicely adjusted distribution of power between the State and Federal governments, so necessary to the well-doing of our peculiar institutions, is not unworthy of consideration. This distribution, so satisfactory

in times of peace, has, in some degree, been disturbed by the accessions of authority and influence to the latter, growing out of the needs and operations of this war. I am not disposed to question either the constitutionality or expediency of the action of the Federal Government, in the pressing emergencies of the rebellion. But it may be questioned not only how far the feeble character of the military organizations of the Northern States compelled the national authorities to resort to the present method of raising forces, but even encouraged and made possible the rebellion itself. It is certain, however, that a numerous well-disciplined militia, ready and prompt to act in any exigency, will hasten the time when the National Government may relieve itself from the burden, and the State from the danger of large standing armies.[18]

LOCAL LEGISLATION AND ECONOMY.

In these times of vast transactions, on the part of the National Government, in the products of almost every branch of industry, when every business enterprise is stimulated to an unprecedented degree, there is likely to develop in individuals and legislatures, a tendency to extravagance and speculation. Under such stimulus a thousand fancies assume the appearance of reality and value, and legislative bodies are approached with the utmost honesty of purpose for their sanction and aid to schemes which, for the time, seem to promise the development of great resources, and to be of very general benefit. I hope the efforts of your bodies, forewarned by many disastrous precedents, will be directed to discourage this tendency. A spirit of speculation may be checked, as far as you can influence it, by discouraging special legislation, and confining your action to matters of undoubted general interest

[18] Numerous amendments to the militia law were made by chapter 612, passed April 29. Section 1, relating to exemptions, was sustained in People ex rel. Cunningham v. Roper (1866), 35 N. Y. 629.

and established precedent. It is better that even a few meritorious subjects of local interest should lie in abeyance for a time, than that you should give way to the pressure sure to follow of numberless schemes, the real value of which it is impossible to determine in the present condition of things. I doubt not that you will be governed by a sense of that economy which requires the confining of your expenditures within the limits set by law and wholesome experience.

GENERAL CONSIDERATIONS.

The best criterion of a great people is their capacity for endurance. Mankind show themselves heroic amid suffering and trial; so with our ancestors, so is it with us now. And, having resolutely determined to go thus far in the struggle, we shall not falter or hesitate when the rebellion reels under our heavy blows, when the victory, upon all the methods of human calculation, is so near.

It is hardly worth while to enter into a general discussion of the causes of the war which was forced upon us, or to speak of the duty of the people in the crisis. The flagitious character of the former is seen more and more clearly, and the latter is so obvious and readily accepted, that I could add nothing to its clearness or the spirit which animates it. In the years of peace and prosperity of our country, the northern mind, as a general thing, reposed in the anticipation that slavery would be ultimately removed by methods, though peaceful, as imperative and inexorable as are the laws of population and the progress of Christian civilization. The like consideration or apprehension rendered the slaveholding class in the South politically desperate, and with the bitterest hatred towards free industry, finally led to the conspiracy against the Government. The slaveholder contemplated his own class, which, numerically, did not include more than one million and a half. He saw, on the other hand, that the preponderance of free labor, with its increasing power and right, would, in the future,

govern the country. It was this view of the case which led the privileged portion of the South to enter upon the project of revolution, and which not only meant separation from the North, but also a change from a democratic to an aristocratic government — to abrogate popular government in the South, and create another upon the ruins of the old which should perpetuate slavery. It was a conflict over the fundamental principles of government. This is alike evident from the purposes of those fomenting and leading the revolt, and from the ready sympathy with which the treason has been greeted by the opposers of popular government in Europe.

Whilst the patriotic masses of the Union who have struggled to uphold the nationality and save the life of the Republic have had the active sympathy of the humane and liberal people of Europe, we have found in the supporters of anti-democratic governments abroad the apologists, the advocates, and to some extent, the aiders and abettors of the rebel cause. So long as human bondage could be made a national stigma and dishonor to bring American democracy into disrepute, the organs of aristocracy in Europe were open in reviling slavery. But when slavery perpetuation became the motive for overthrowing popular institutions in America, the rebellion was justified in the opinion of this class.

But we may reasonably expect, in view of transpiring events, and the recent expression of public opinion, that this institution, which has thus always been an element of weakness and dissension at home, and a source of reproach abroad, will be eradicated from the land. It seems to have been so ordered, by an overruling Providence, that the mad ambition of those who sought to perpetuate slavery, at the expense of the Union and civil liberty, should not only have arrayed the armies of the North to overthrow its material power, but should have stimulated the moral consciousness of the people to a clearer view of its wickedness and dis-

loyalty, so as for the first time in our history to render its utter extinction feasible.

I may safely predict, as I earnestly hope, that an amendment to the Constitution will be speedily submitted to the people and adopted by them, which shall forever prohibit slavery within the free Republic of the United States of America.[19]

The Constitution of the Union makes it the duty of the National Government to maintain for the people of all the States republican governments.[s] It is no less the duty of each State to throw its whole weight and influence firmly on the side of this great fundamental requirement. This government our fathers intended to establish and transmit as a legacy to posterity. Irrespective of the divisions into States, we are called upon to maintain and perpetuate the trust. Eighty years of enterprise, prosperity and progress have not lessened our obligations, or checked our devotion to the great cause of civil liberty. It is not a mistake to assume that, whatever exigency may follow, whether domestic or foreign, the great body of the people will go forward to meet and overcome it with the same firm and

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[19] On the 11th and 17th of January, 1865, the Senate and Assembly adopted a concurrent resolution recommending an amendment to the federal Constitution providing that "slavery being incompatible with a free government, is forever prohibited in the United States; and involuntary servitude shall be permitted only as a punishment for crime. Congress shall have power to enforce the foregoing section of this article by proper legislation."

Afterwards the Thirteenth Amendment, as proposed by Congress, was submitted to the Legislature, and was ratified by a concurrent resolution adopted by the Senate and Assembly on the 2d and 3d of February, 1865. This amendment declared that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." In the Senate the vote on the resolution was 18 to 8, and in the Assembly 72 to 40.

The Thirteenth Amendment was also ratified by statute, chapter 552, passed on the 22d of April, 1865. In the Senate, the vote on the final passage of the bill was 18 to 3, and in the Assembly 90 to 22.

[s] U. S. Const. art. 4, § 4.

irresistible energy which characterized our ancestors, and has marked the subsequent course of our civilization. In this patriotic determination of the people for unity, liberty and the Constitution, I shall, at all times, earnestly join.

REUBEN E. FENTON.

SPECIAL MESSAGES.

January 9. To the Assembly: Transmitting the report of the Board of Metropolitan Police.

January 9. To the Assembly: Transmitting a communication from William H. Seward, Secretary of State of the United States, enclosing correspondence between himself and Senor Blas Bruzual, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Venezuela, in relation to the purchase of certain property in the city of New York, to be used and occupied by him during his official residence in the United States. Legislation was sought permitting the Venezuelan minister to hold and transmit real property in this State, but no action was taken on the matter at this session.

January 12. To the Assembly: Transmitting the annual report of the Commissary General of Ordnance.

January 12. To the Assembly: Transmitting the annual report of the Adjutant General.

January 17. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 16, 1865.

"In compliance with the resolution of your honorable body, of the 13th inst., of which the following is a copy:

'*Resolved,* That his Excellency the Governor, be requested to communicate to the Assembly all the information in his possession relative to the quota of each district of the State under the President's last call for three hundred thousand volunteers; also, to inform the Assembly

whether any part of the quota of any district or districts is for deficiencies existing in such district or districts under previous calls.

By order, J. B. CUSHMAN, Clerk.'

I submit the following as all the information in my possession on the subject to which it relates: The quotas of the State and districts are undergoing correction in the department at Washington, and credits are being allowed up to December 29th ultimo. The quota was based upon the evidence the Provost Marshal General had at the time the figures were made. Officers whose duty it was to make returns had neglected in some cases to forward the correct statements of credits.

As further relating to the subject, I communicate the following letter of the Adjutant General:

'ADJUTANT GENERAL'S OFFICE,
ALBANY, *January* 16, 1865.

To HIS EXCELLENCY REUBEN E. FENTON, GOVERNOR OF THE STATE OF NEW YORK:

Governor.—In reply to your inquiry respecting the quota of this State under the President's last call for 300,000 men, and the assignments to districts, I have the honor to report that the quota of the State, as reported to this office, is forty-six thousand, eight hundred and sixty-one (46,861).

The assignments to districts have been so corrected and altered, that no reliable information of exact quotas can at present be obtained. As an evidence of the incorrectness of these assignments, the Erie district was reduced nearly two thousand (2,000) by discovered errors. Whether this correction reduces the quota of the State, I have no means of knowing. I understand that the list of quotas first published, of districts, has been withdrawn for cor-

rection, and no corrected list has been furnished in this department.

I have the honor to be, very respectfully,
Your obedient servant,
WILLIAM IRVINE,
Adjutant General.'

As bearing upon the mode of assigning quotas, and therefore relating to the subject of your inquiry, I lay before you some extracts from a letter of the Provost Marshal General to the Governor of Minnesota:

'It was not expected that the call of July 18, 1864, for 500,000 would put that number of men in service, because the act of Congress under which the call was made directed that all enlistments made in the navy from the commencement of the rebellion until the 24th of February, 1864, should be credited upon the quota, and these with other equitable claims for enlistments not previously credited, reduced that call, and rendered necessary the one of December 19, 1864, for 300,000.

'The object, therefore, of the last call, is to put 300,000 men in the service. Whether they are enlisted for one, two or three years, they will be counted as units in filling the quota, and the excess or credit which any locality may be entitled to on account of filling the quota with three years' men, will be estimated in the assignment of future quotas, should there be another call, upon the same principle that has varied the quotas under the present call, because some localities have filled their quotas under the call of July 18, 1864, with three years' men, and others with one year's men. It will be observed that the numbers of men to be furnished under the present call are not in proportion to the population of States or districts, nor to the number enrolled.

'The call of December 19, 1864, having been made to make up deficiencies under the call of July 18, 1864, it is

not to be expected that the number of men required from localities will correspond with the number enrolled, or their quotas under the call for 500,000. In order, therefore, to ascertain what number of men is due from a given district, we must look to what is actually furnished under the call of July 18, instead of what it was required to furnish. Thus, where two districts, having the same enrollment, were required, under the call of July 18, 1864, to furnish two thousand men each, and one actually furnished but one thousand men, while the other filled its quota, it would not be lawful for the latter district, which had put two thousand men in service, to be required now to furnish the same number as the former, which had furnished only one thousand.

'But suppose that both of the above districts had filled their quotas, the former with one year's men, and the latter with three years' men, the one furnished two thousand, and the other six thousand years of service, now, as the law provides that quotas shall be assigned "among the districts of the several States, considering and allowing for the numbers already furnished as aforesaid, and the time of their service," in assigning a quota under a call to make up deficiencies, the deficiency of years' service, as well as the deficiency in number, are to be estimated, and the quotas varied accordingly. As before said, the object of the present call is to raise 300,000 men, and they will be required from the different localities in proportion to the number enrolled, and the number which such localities were deficient, or in excess, under the call for 500,000.

'The rule in applying credits is, that they should be deducted from the quota of the call that produced them. All men raised since the call of July 18, 1864, are credited upon the quota under that call; if the quota is more than filled, it is carried as an excess to the credit of the locality, and taken into account *in the assignment of the quota under the call of December* 19, 1864, and provost marshals are

instructed, that in determining the quotas of sub-districts under the present call, they will apply such excess accordingly; and all men raised since December 19, are of course credited upon the call of that date.

'In crediting the excess that is carried forward from the call of July 13, 1864, and applied to the call of December 19, 1864, I consider not only the number of men of which the excess is composed, but also the period of their service; and the quotas assigned under the call of December 19 are thus reduced by this excess of service, and hence they should not be further reduced, except by enlistments subsequent to December 19, 1864, the date of the call for three hundred thousand men.'

All of which is respectfully submitted. [See note 17.]

R. E. FENTON."

January 25. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 25, 1865.

"I have the honor to transmit the following statement from the Provost Marshal General in regard to the quotas for the several districts of the State:

WAR DEPARTMENT:

PROVOST MARSHAL GENERAL'S OFFICE,
WASHINGTON, D. C., *January* 24, 1865.

To HIS EXCELLENCY R. E. FENTON, GOVERNOR OF NEW YORK, ALBANY:

SIR.—I have the honor to inform you that the quota of the State of New York, under the call of December 19, 1864, is sixty-one thousand and seventy-six (61,076), divided amongst the several districts as follows:

1st	district	1,065
2d	"	3,172
3d	"	1,741
4th	"	4,039

5th	district	3,907
6th	"	3,023
7th	"	3,970
8th	"	3,348
9th	"	3,732
10th	"	1,634
11th	"	1,061
12th	"	1,392
13th	"	2,047
14th	"	3,249
15th	"	676
16th	"	739
17th	"	748
18th	"	1,832
19th	"	887
20th	"	1,635
21st	"	1,044
22d	"	1,522
23d	"	1,943
24th	"	2,527
25th	"	1,610
26th	"	1,110
27th	"	2,226
28th	"	1,653
29th	"	843
30th	"	2,194
31st	"	1,507

' These quotas are made up after taking into account all the credits to which the several districts are entitled on account of men raised up to December 31, 1864, including excesses under former calls.

'All men put into the service subsequent to the first day of January, 1865, will be credited in the reduction of the figures therein set forth.

I am, sir, very respectfully your obedient servant,
(Signed)

JAMES B. FRY, Provost Marshal General.'

Thus it will be seen that the quota of the southern division is twenty-eight thousand six hundred and thirty-one (28,631); northern division, fourteen thousand two hundred and sixty-six (14,266); western division, eighteen thousand one hundred and seventy-nine (18,179). [See note 17.]

Respectfully submitted,
R. E. FENTON."

January 30. To the Assembly: Transmitting the annual report of the Quartermaster General.

January 31. To the Assembly: Transmitting the annual report of the Commissioners of Public Accounts.

February 1. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 1, 1865.

"A proposition to amend the Federal Constitution, forever abolishing slavery throughout the United States, has been adopted by both branches of Congress. I lose no time in calling your attention to this great event, for the purpose of recommending that immediate measures be taken for a ratification of the proposed amendment by this State.

The importance of this action of Congress, in opening the way for the extinguishment of slavery, cannot be overestimated. Our national history presents nothing of greater consequence.

The institution of slavery—always an element of discord—has more than once threatened the country with civil war. At length the menaced evil came. But the strength of the rebellious power is slowly waning, and, under Providence, the violent and wicked outbreak which has so severely tried the endurance and patriotism of the people is giving way. At this opportune period, Congress proposes a measure which will forever remove this source of

strife and national disaster. If the States exhibit the wisdom of the national legislature it may be done. To this end let us hope and let us act. Then, the day is not distant when the Constitution of the United States will harmonize with the Declaration of Independence—the nation will be free.

I am confident that the ratification of the amendment by the States will form a sure guarantee of the future prosperity, security and peace of our common country; and I see no reason why the Legislature may not act in this matter at once. Such a course would comport with the dignity and power of New York, as well as with her conceded influence in the sisterhood of States. Let her Legislature be first to act. Let slavery be abolished so far as New York can do it; and I could wish that it might be done without a dissenting voice. Is it not an occasion for us to act together? Why, then, cannot we unite, now that the opportunity is presented, to remove an institution which has not only been productive of evil, but which has done so much to demoralize our social condition and embitter our political action. [See note 19.]

R. E. FENTON."

February 1. To the Assembly:

"IN ASSEMBLY,
ALBANY, *January* 30, 1865.

'On motion of Mr. Reed.

"*Whereas,* Information is abroad that the official quota of this State, under the present call of the President for 300,000 men, as published on or about the 7th day of January inst., has been increased from 46,000 to 62,000 men, which increase is apparently without explanation; *and whereas,* the people of this State are as loyal and devoted to the national cause as at any former period, but are surprised and sensibly affected by this change, which to them is inexplicable and unsatisfactory; therefore,

Resolved, That if not incompatible with the public interest, His Excellency the Governor be respectfully requested to communicate to this House all information he may have respecting the increased quotas of this State, the reason or basis of the same, and his action in connection with or in reference thereto.

By order,
J. B. CUSHMAN, Clerk.'

In compliance with the request contained in the foregoing resolution, I have the honor to submit the following:

In view of the importance of the subject, I deem it due to the representatives of the people of the State that a full history of the action taken in reference to the quotas and the mode of filling them be given.

When the first assignment of quotas, under the present call, was made by the Provost Marshal General, it appeared to me that there must be great inequality as between the districts in the number of men they should furnish for the service, and this soon became a source of general complaint and dissatisfaction among the districts which had heretofore furnished most largely of one year men. While at that time I did not suppose the quota of the State—about 46,000—was more than its just proportion of the 300,000 called for, still with the conviction that the quota as assigned to the different districts was unequal in its practical operations, I sent Col. J. B. Stonehouse, A. A. G., on the 10th day of January, to Washington, in reference to means of filling the quotas, and on the 12th inst., sent my aid, Col. George W. Palmer, to confer with the authorities of the War Department, giving them fully my views upon the subject, and directing them to communicate them to the Provost Marshal General and Secretary of War.

Col. Palmer reached Washington, on the 13th inst., and obtained an interview with the Provost Marshal General

and Assistant Secretary of War (the Secretary himself being absent from the city), after which he submitted the following communication in writing, with the understanding that the matter should be submitted to the Secretary of War on his return, viz:

'WASHINGTON, *January* 14, 1865.

'GENERAL.—I am directed by the Governor of the State of New York to represent to you the difficulties under which many of the districts in that State labor in the assignment of quotas under the late call of the President for 300,000 men, and to ask that some mode be adopted which will tend to relieve them from their heavy burdens and distribute the number of men to be raised more equally between the several districts.

'In filling the quota under the call of July 18, 1864, for 500,000 men, made under the new law, requiring the term of enlistment, as well as the number of men furnished to be taken into account, the effect of a longer or shorter term of service, was not regarded in many districts, through ignorance of the operations of the law, from an apprehension that no more men would be needed—a view which was encouraged in various ways—and from a strong desire to avoid conscription which required immediate action with the necessity of enlisting without regard to the terms of service.

'The result is that many districts furnished almost exclusively one year men. These were generally inland and rural districts, whose location precluded them from obtaining recruits from a class of transient men and foreigners, and compelled them to send their own sturdy yeomanry into the field, paying large bounties as an inducement, and thus getting the very best class of soldiers. Other districts having greater facilities for furnishing men with less efforts enlisted three years men.

'The assignment of quotas under the present call, though

made according to law, throws the burden of raising all the men upon the districts which enlisted one year men, and which are entitled to the credit of doing everything they could to fill the quota, and actually furnished a superior class of soldiers. It is worthy of consideration also, that if the credits, on account of which the late call was made, could have been allowed before, instead of after the call for 500,000 men, and the quota sufficient to raise the required number of men been then assigned to the various districts, the relative disparity in the number of men to be raised would not have existed. The quotas would have been increased in proportion to the number of men and not in proportion to the years of service. It is easier to procure one three years man than three one year men, and especially when they have to be taken from the bone and sinew of those districts whose honest laboring classes are already sadly depleted, and it is difficult to carry on the labor of the country by reason of it, and it would seem eminently proper to adopt some plan, if possible, which would at once relieve this difficulty and do no injustice to any locality, nor yet violate the laws of the land.

'It is confidently believed that if under the last call for 300,000 men, the term of enlistment should be regarded as the basis upon which the quota might be filled, and men enlisted for two or three years be allowed to credit as two and three one year men, this burden would soon equalize itself; and if the required number of men should not be obtained under this call, repeated calls might be made till the army should be sufficiently supplied with men.

I am satisfied if this plan could be adopted that the people of those districts which now have such large quotas to fill, would go earnestly and cheerfully to work to procure good men for long terms of service, feeling that they had a chance to place themselves upon an approximate equal footing with other districts which had already furnished three years men; but if on the contrary it shall be decided

that these districts must furnish now the full number of men called for, I greatly fear that the people will settle down into a state of despondency, and thinking that their burden is greater than they can bear, do little or nothing towards raising the requisite men for the service.

Very respctfully, your obedient servant,

GEO. W. PALMER, Col. and Aid-de-Camp.'

The case being thus presented to the War Department, I awaited the return and decision of the Secretary of War, until the evening of the 20th inst., when Col. Stonehouse handed me the following telegram from Provost Marshal General Fry, viz:

'WASHINGTON, D. C., *January* 20, 1865.

To Col. J. B. STONEHOUSE:

The revised quotas will be sent in a day or two (2). The quota of New York will be increased by the revision, and will probably be a little over sixty thousand (60,000).

Signed. JAMES B. FRY, P. M. General.'

This large increase of the quota of the State, from 46,000 to 61,000, was surprising to me, and I took the first train on the morning of the 21st for Washington to do what was in my power towards correcting our quota, and, if possible, prevail upon the Secretary of War and Provost Marshal General to adopt my proposition as to the mode of filling the quotas. I at once obtained an interview on my arrival at Washington, with them, and urged the adoption of the system of taking one year's service as the basis of credit in filling this call, thus giving an opportunity to speedily equalize the number of men to be raised, between the several States, districts and sub-districts in the country. I called their attention to the above written statement left in the matter, by Col. Palmer, and endorsed the following upon it, viz:

'I respectfully renew the suggestions of Col. Palmer,

and ask early consideration and reply. The views herein submitted are still in force, and I can only add that it is my earnest desire they may receive the approval of the Provost Marshal General and the Secretary of War.

R. E. FENTON.'

January 22, 1865.

I will not attempt to give a detailed account of the interview or the argument used orally at the time, in favor of the proposition, but merely state that I endeavored to impress upon their minds the injustice towards a large portion of the people of the State, which would result from the enforcement of the system of filling the quotas then adopted at the department, and the importance of so changing it as to make all acknowledge that there was a disposition at the department to divide the burdens to be borne as equally as possible.

In reference to the matter of the great increase of the quota of the State, while I was not prepared, nor had I the time to go through their entire figures to prove their incorrectness, yet in my interview with the Provost Marshal General and the Secretary of War, I presented substantially the following statistics and views for their consideration in connection therewith.

The quota of New York under call of February 1st, 1864, for 500,000 men was 81,993. On this basis the State would have to furnish, on a call of 300,000 men, 49,195. Under the call of July 18, 1864, the number assigned to this State, as its quota of 500,000 men, was 89,318, a call for 300,000 on this basis would make the quota for the State, 53,900. The State, at the date of the present call, had a surplus of 6,750 men over all former calls, which should go to reduce its quota under the present call.

Assuming that the State of New York had furnished comparatively as many three years men as the other States,

it will be seen that the quota under this call, as originally assigned, is nearly correct, for instance:

Take the quota on the basis of July 18, 1864, of...	53,900
And deduct the surplus.....	6,750
It would leave the quota.....	47,150
The quota as at first assigned under the last call was.....	46,821
Making the difference only.....	329

I stated it was difficult to see how such great changes, as had been made in the quotas of New York, could be rendered necessary by the alterations in the enrollments and the addition of credits since the promulgation of the first assignments of the quota.

I also referred to the large increase of the quotas in the city of New York, which seemed to me extraordinary. In general terms, as near as I can now recollect, the explanations for these great changes in the quotas, as given by General Fry, were:

That there had been credits given to a considerable extent to some States and localities that belonged to others, and which had been corrected since the first assignment.

That owing to the neglect of mustering officers to make their reports of muster promptly, and from other causes, large numbers of credits of men enlisted prior to the last call, had been reported from some States and localities, and credits for them had been given.

That many of the States and localities had corrected and reduced their enrollments largely, some to a greater extent than others, which when taken into consideration, materially changed the quotas.

That by reason of some or all of these causes, the differences and changes complained of as between States and localities in the first and second assignment of quotas was

perfectly explained, and that the quotas as now assigned were just and right as near as he could make them. I understood at that time that the question of assignment of quotas, as between the several States under the present call, would not be again opened.

I returned to Albany on the evening of the 23d inst. On the morning of the 24th I sent the following telegram to the Provost Marshal General, viz:

'ALBANY, *January* 24, 1865.

JAMES B. FRY, Provost Marshal General, Washington, D. C.:

Upon my return I meet with additional reasons in favor of my proposition. I hope yourself and Secretary of War will conclude to adopt them.

R. E. FENTON.'

To which, the same day, I received the following answer:

'WASHINGTON, *January* 24, 1865.

Governor FENTON:

When you see the apportionment of quotas to districts and understand the manner in which they are to be subdivided among towns, I think you will find there is not much to object to in the arrangement. Please, however, submit at your earliest convenience the additional reasons in favor of your proposition, to which you refer in your dispatch to-day, that I may lay them promptly before the Secretary.

JAMES B. FRY, Provost Marshal General.'

On the morning of the 25th I forwarded by mail to the Provost Marshal General the following reply:

'STATE OF NEW YORK:

'EXECUTIVE DEPARTMENT,
ALBANY, *January* 25, 1865.

'GENERAL.—What I meant to have you understand by my despatch of yesterday in stating that there were 'addi-

tional reasons in favor of my proposition,' was simply that the pressure of public sentiment is becoming more intense in favor of the adoption of the system which I proposed.

In view of all the circumstances, and the manifest equity of the proposition, to take one year's service as the basis of credit in filling the present quota, thus giving those districts which have heretofore furnished one year men, the same chance now, which others have had to furnish years of service, I am convinced, as a matter of policy alone, that this plan should be adopted, as it would secure the hearty co-operation of the people in raising men for the service, and produce that moral effect upon the soldiers which is important to the effective condition of an army, and which can but be obtained by a healthy home feeling. If, in adopting this policy, the requisite number of men should not be obtained, another call might be made for the deficiency, which, under the operation of this system, would be distributed among all the districts in the country, and thus render the burdens more equal.

Very respectfully, your obedient servant,

(Signed) R. E. FENTON.'

Brig. Gen. JAS. B. FRY, Pro. Mar. Gen.

On the 26th of January a delegation of honorable gentlemen from the Senate and Assembly indicated to me their willingness to visit Washington and urge again upon the authorities the adoption of the propositions already submitted by me, and, after full consultation, they left the next day for that city.

On the day following (28th) I again sent Col. Stonehouse with full instructions and figures as to quotas, to confer with the committee and present anew to the Department, and on the 30th I sent him further instructions in writing, as follows:

'STATE OF NEW YORK:

'EXECUTIVE DEPARTMENT,
ALBANY, *January* 30, 1865.

Col. J. B. STONEHOUSE, Ass't. Adj't. Gen. S. N. Y.:

'COLONEL.—In addition to the instructions given you in reference to your communications with the authorities at the War Department, as to the correction of the quota of this State and the mode of filling it, you are further directed, if my former proposition is not accepted, to urge that the time for raising the men to fill the quota in those districts which furnished one year men be extended till the term for which these men enlisted expires; and that the privilege of correcting the enrollments be continued until the very latest practicable time before the draft, and the final quota be made up from this corrected enrollment.

And further, you are directed to urge, in any event, that the time for the execution of the draft be postponed.

It may not be important, however, to insist on this if my proposition in regard to the mode of filling the quota be accepted.

Very truly,
R. E. FENTON.'

This comprises the action taken in relation to the subject matter of the foregoing resolutions, and I can only add that whatever may be the final decision upon the questions thus presented, while, if adverse, we cannot but feel the inequality and hardship, yet the best interests of the country, and a high sense of duty to the cause in which we are engaged, demand that we submit with becoming forbearance to what we have been unable to change, and put forth every possible effort to fill the quota assigned to the State in the manner prescribed. [See note 17.]

R. E. FENTON."

February 2. To the Assembly: Transmitting the following communication:

"WASHINGTON, *February* 2, 1865.

GOV. FENTON:

We obtained to-day the President's consent to the following proposition:

'That so much of the revised quota as was added to the State of New York by the order of January 24th (say 16,000), be deferred for further investigation. This deferred portion of the quota is to be deducted *pro rata* from the various districts of the State.

'This is to be carried out by the deduction of 25 per cent. from the quota of each district in the State as assigned January 24th.

'The deferred portion is to be subject to further examination and action. [See note 17.]

JAMES A. BELL,
GEO. H. ANDREWS."

February 7. To the Assembly: Transmitting the annual report of the Cooper Union.

February 7. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 7, 1865.

"I have the honor to transmit herewith a communication from the Department of State at Washington, together with an enclosure in reference to the subject of statues for the Hall of the House of Representatives.

R. E. FENTON."

The following are the communications referred to in the Governor's message:

"DEPARTMENT OF STATE,
WASHINGTON, *February* 3, 1865.

To his Excellency the GOVERNOR OF THE STATE OF NEW YORK, Albany, New York:

SIR.—I have the honor to transmit to your excellency a copy of a letter of the 25th ultimo addressed to the President by the Hon. Justin S. Morrill, of the House of Representatives, inviting his attention to the second section of the act of Congress of the 2d July, 1864, upon the subject of Statues for the old Hall of the House of Representatives. The President has directed this Department to request, through your excellency, that the State of New York may take the matter into consideration.

I have the honor to be

Your excellency's
Most obedient servant,

F. W. SEWARD,
Acting Secretary.

HOUSE OF REPRESENTATIVES.

COMMITTEE OF WAYS AND MEANS,
WASHINGTON, D C., *January* 25, 1865.

DEAR SIR.—Permit me respectfully to call your attention to section two of the act of Congress of July 2, 1864, (page 347 pamphlet edition), which set apart the old Hall of the House of Representatives for a Hall of Statuary by which you were authorized to invite each and all the States to provide and furnish statues in marble or bronze, not exceeding two in number for each State, of deceased persons who have been citizens thereof, and illustrious for their historic renown, or from distinguished civic or military services, such as each State shall determine to be worthy of this national commemoration; and when so furnished the same shall be placed in the old Hall of the House of Representatives in the Capitol of the United States, which is

hereby set apart, or so much thereof as may be necessary, as a National Statuary Hall for the purposes herein indicated.'

That you approve of the high purposes of this law, I have no doubt; and in view of the fact that several of the State Legislatures are now in session, but soon may adjourn, may I ask you to take such action at once as you shall deem appropriate, in order to notify and give the invitation provided for to the Governors of the several States, so that they can take early steps to carry the purpose of Congress into full effect.

With high respect,

Your most ob't servant,

JUSTIN S. MORRILL.

THE PRESIDENT.

February 8. To the Senate: Transmitting a certified copy of the thirteenth amendment received from the Department of State at Washington. [See note 19.]

February 8. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 8, 1865.

"On the 25th of April, 1864, the Legislature passed an act entitled 'An act to provide grounds for the final resting place of the remains, and monuments to perpetuate the memories of the soldiers of this State, who fell in defence of the Union on the battlefields of Gettysburgh and Antietam,' by which act the sum of $30,000 was appropriated to carry into effect the provisions thereof.

In reference to the terms of this act, Mr. David Wills, President of the Soldiers National Cemetery Association at Gettysburgh, Pa., says:

'Now it is uncertain from the terms of this act, how much is to be paid to each of these objects, and the subject

requires a declaratory act to be passed by your present Legislature.

'I refer you to the two resolutions at the bottom of page 5 and continued on page 6 of the proceedings of the board at their last meeting, held December 7th, 1864. I have in obedience to the last resolution, addressed the Governors of all the States which had not made sufficiently large appropriations, asking an increase of appropriation, only to be drawn for in case Congress fails to make an appropriation.

'I have heard from a number of States already which have acted in the matter.

'I would suggest and recommend that you have the Legislature of New York pass a declaratory act specifying that the sum to be paid to the Soldiers National Cemetery, under the provisions of the act of 25th of April, 1864 (naming the act,) shall be $26,100. This will meet the full object to be obtained by the resolution referred to, and will avoid the necessity of asking for any additional appropriation.'

The resolutions referred to by Mr. Wills, are as follows:

'*Resolved,* That the President and Secretary of this board be a committee in its behalf to memorialize the Congress of the United States, now in session at Washington, to appropriate the sum of fifty thousand dollars to the Soldiers National Cemetery, for the erection of a monument to the memory of the soldiers who fell in the memorable battle at Gettysburgh, on the first, second and third days of July, 1863.

'*Resolved,* That the President be requested to address the Governors of the Several States, which have made appropriations for the Soldiers National Cemetery at Gettysburgh, apprising them that the amount thus far contributed by their Legislatures is inadequate to carry out the plans of the association, in consequence of the great advance in labor, the cost of materials and the adoption of a design for a monument costing about forty thousand dollars more than originally estimated for; and that he ask them to procure from their Legislatures an additional ap-

propriation equal to the sum originally asked for, for the purpose of completing the Soldiers National Monument at Gettysburgh, in case the amount required shall not be granted by the Congress of the United States for the same object.'

I take pleasure in calling the immediate attention of the Legislature to this matter, and hope it will receive prompt and favorable consideration.[20]

Respectfully submitted,

R. E. FENTON."

February 16. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 16, 1865.

"I transmit herewith the report of the Commissioners of Quarantine, made pursuant to statute. It embraces the report of the health officer of the port of New York, which is replete with information regarding the various diseases which came under his observation and inquiry at Quarantine, and abounds with valuable suggestions affecting the commercial and sanitary interests of the city and State.

From the arguments and references in the report of the commissioners, it seems obvious that far greater protection to the health of the city would be secured by the detention and purification of well passengers and their baggage on land, such as have been exposed on board vessels to smallpox and ship fever.

The report further shows the impropriety and evils accruing from the detention of such passengers after a long voyage on shipboard, and the dangers of landing them prematurely in a densely populated metropolis. It sets forth

[20] No appropriation for a national cemetery in response to the Governor's suggestion was made at this session, but in 1866, an act, chapter 37, was passed February 10, appropriating $20,000 as New York's proportionate share of the estimated expense of completing the cemetery, and erecting a monument in memory of the soldiers who fell in the battle of Gettysburg.

also the losses which accrue to the great commercial interests by the detention of vessels under the present quarantine system, and exhibits how, under suitable management, such losses might be avoided.

It seems desirable that some place shall be appropriated, where well passengers who arrive on suspected vessels, may be detained and properly cared for on land, and for this purpose, the recommendations of the report, that the unoccupied portion of Ward's Island be fitted up, under the legal authority of the Quarantine Commissioners, and occupied for such purposes, is worthy of the careful consideration of the Legislature.

With the present facilities for the administration of quarantine regulations in reference to vessels from infected ports, sanitary and commercial interests are apparently antagonistic. It is of vital importance that these interests should be harmonized. In order to accomplish this, I am led to suggest, in accordance with the report, the propriety of two classes of warehouses, one for sanitary reasons, in the lower bay, and the other for commercial reasons, in the upper bay. The one in the lower bay should be for vessels positively infected, and subjected to obligatory quarantine, to be erected after a careful survey of the grounds, under the direction of competent engineers and architects. It seems important that this suggestion be acted upon at the earliest practicable period.

The commercial interests of our great continental emporium, seem to demand the construction of warehouses in the upper bay, of ample dimensions, since vastly the larger number of vessels are suspected of infection by coming from infected ports, but which at no time present in themselves positive indication of disease. The object of such warehouses, as will readily appear, would be to receive cargoes for immediate and thorough ventilation, by which the expense would be lessened; the period of quarantine reduced, and merchandise would be thrown more speedily into market.

The report likewise directs attention to a supposed want of jurisdiction in the State for quarantine purposes, over the waters of the lower bay. By treaty stipulation, New York ceded in 1833, to New Jersey, jurisdiction over that portion of the waters of Raritan Bay, adjacent to Staten Island, and easterly of a line drawn through their centre, to a point where that line would intersect one drawn from Prince's Bay Light House on Staten Island, to Mattavan creek in New Jersey; New York, however, retaining her right in the lands under those waters. It would consequently seem that no portion of the waters of the lower bay is affected by the terms of the treaty of 1833, and that the right of New York to the lands under them and her jurisdiction over them, are as indisputable as before the treaty was ratified. It should, however, be remarked, that this right and jurisdiction have been questioned by New Jersey, and that they becoming involved in suits between private persons, that State directed her law officers to resist them. But in conference with the Attorney General, who is charged in these suits by a resolution of the Senate with the interest of the State, I have been informed that New York, possessing undoubted jurisdiction over the waters of the lower bay of New York, as well as a right to the lands under them, may properly assert that jurisdiction on all occasions of public importance and necessity.

For the greater protection of the community, therefore, I suggest that a proper commission be appointed, of whom the Attorney General shall be one, to negotiate with New Jersey relative to a more efficient quarantine regulation by that State on waters under her jurisdiction, or by conceding to New York the right to enforce quarantine regulations upon them.

It is further shown that the present boarding stations at the grounds of the old marine hospital, are deficient in wharves and docks for the security and protection of vessels, &c., belonging to the State, and insufficient for the

steamboat used in communicating with infected vessels, and which finds unwelcome harbor at other docks. The necessity for suitable repairs and structures for such purpose, before the ensuing quarantine season, appears imperative.

In the event of the State declining to erect suitable buildings, wharves, &c., I venture to suggest the propriety of a law which shall enable incorporated companies to erect warehouses suitable for the purposes set forth in the report.[21]

R. E. FENTON."

February 28. To the Assembly: Transmitting the annual report of the Surgeon General.

March 13. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 11, 1865.

"I have the honor to enclose herewith a communication from the Secretary of the Treasury of the United States, relative to the authority recently given by Congress to the general government, to purchase the Exchange Building

[21] Chapter 592, passed April 28, 1865, amended the quarantine law of 1863, in several particulars relating to administration.

The Governor's last suggestion was embodied in chapter 613, passed April 29, which authorized the formation of a corporation "for the purpose of erecting warehouses and docks in the port of New York for quarantine purposes." Only one corporation could be formed, and its warehouses and other buildings were to be located by the commissioners of the land office and the construction of its buildings was to be approved by the quarantine commissioners. The State reserved the right to purchase all the property of the corporation at any time.

The same act authorized the Governor to appoint three commissioners, of whom the Attorney General should be one, to confer with New Jersey "in regard to quarantine jurisdiction in the waters of the lower bay of New York, and relative to insufficient quarantine regulation with that State on waters and lands under water within her jurisdiction," and report the result of the conference to the next Legislature. The act also contained provisions relative to the duties of the commissioner of emigration.

in the city of New York for custom house purposes, and also submitting draught of a bill for the ceding of the jurisdiction of the State of New York to the United States, over said property.

Early action is suggested by the Secretary, and I commend the whole matter to your favorable consideration.[22]

R. E. FENTON."

March 14. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 14, 1865.

"The accompanying communication of the Inspector General of the State of New York, with the enclosed vouchers, are respectfully transmitted to the Legislature, with the recommendation that such action be adopted as shall secure the payment of the claim for services rendered by the Thirty-Second Regiment, National Guard, State of New York.

R. E. FENTON."

March 15. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *March* 15, 1865.

"The accompanying communication of the Commissary General of the State of New York is respectfully transmitted to the Legislature, and a suitable appropriation for the preservation and necessary repairs of the arsenals of the State is recommended.[23]

REUBEN E. FENTON."

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[22] Chapter 523, passed April 21, granted the consent of the State to the acquisition by the United States for a custom house, of land in the city of New York, described as the entire square formed by Wall, William and Hanover Streets and Exchange Place, covering the whole of said square, including the Exchange building, and improvements erected thereon.

[23] Arsenal appropriations were made by chapter 598, passed April 28, as follows: Dunkirk, $10,000; Albany, $4,000; Buffalo, $10,000; Syracuse, $3,000; Corning, $3,000. Chapter 466, passed April 17, appropriated $30,000 for an armory at Rochester, and $2,000 for a fence around the arsenal at Ballston Spa.

March 29. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 29, 1865.

"I have the honor to transmit, herewith, a communication from the Commissary General of the State of New York, urging that an appropriation of at least ten thousand dollars be made for the repair and completion of the State arsenal at Dunkirk, New York. His recommendations seem to be supported by considerations of public safety, as well as of economy, and I commend the subject to your favorable attention. [See note 23.]

R. E. FENTON."

March 29. To the Assembly: Transmitting the annual report of the trustees of the Sailors' Snug Harbor.

April 12. To the Senate:

Veto of a bill entitled "An act to incorporate the German Association Erheiterung of Staten Island."

I return the bill "for the reason that there exists a general act providing for the incorporation of societies for the purposes embraced in this bill, which recently received my signature. The Legislature has evinced wisdom in forming and adopting a general law, which removes the necessity of special acts of incorporation of associations where objects are of a social or esthetic nature. I had occasion to allude to the subject of general enactments in my message at the opening of the Legislature and I earnestly hope that this general measure will tend to relieve the State of redundant and confused legislation."

The bill was not passed over the veto.

April 12. To the Senate:

Veto of a bill entitled "An act to incorporate the German American Colonization Society."

"The object of the bill is to authorize the corporation created by it to hold personal and real estate in this or any

other State of the Union for the purposes therein expressed, in fact authorizing it to become a speculator in real estate. It seems to me to be a very doubtful policy to pass special acts of incorporation conferring extraordinary powers for such a purpose; I feel confident that upon a reconsideration of the subject the Legislature will agree with me in this opinion. The capital stock of the corporation is fixed by the bill at $500,000, with authority to increase the same to an indefinite amount at the discretion of the board of directors. It is also allowed to commence its operations when only $50,000 of its capital stock is subscribed for, although no portion thereof has been paid in. This surely cannot be deemed expedient.

The bill is also, it seems to me defective in this, that there is no personal liability of the stockholders for debts which may come due to its employees, agents or servants; and is in this respect a departure from the policy of the State in granting acts of incorporation.[h]

For these reasons, thus briefly stated, I am constrained to return the bill without my approval."

The bill was not passed over the veto.

April 12. To the Assembly:

Veto of a bill entitled "An act to incorporate the Gladiator Benevolent Association of the City of New York."

"The objects of the society are not sufficiently apparent; and whatever they are, it may be questioned if the ends of the association could not be fully accomplished under the general act providing for the incorporation of societies for social or recreative purposes, which received my signature on the 11th inst. [Chap. 368.]"

The bill was not passed over the veto.

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[h] Const. 1846, art. 8, § 2.

April 12. To the Assembly:

Veto of a bill entitled "An act to incorporate the National Glee Club of the city of New York."

"The objects of the association can be fully attained under the recent general law providing for the incorporation of societies or clubs for social, gymnastic, esthetic, musical, yachting, fishing, batting or lawful sporting purposes.

Section one, article eight of the Constitution, is intended to restrain this species of special enactments, and I am of the opinion that all bills within the scope of the general act should not receive the sanction of the Legislature.

Sound policy would seem to dictate, that the general law, which is ample in its provisions and liberal in its spirit, should operate to defeat a large and growing class of measures, which absorb much of the time of your honorable body and create unnecessary and cumbrous legislation.

For the foregoing reasons briefly expressed, I return the bill without my approval."

The bill was not passed over the veto.

April 13. To the Assembly:

Veto of a bill entitled "An act to incorporate the Atlantic Base Ball Club."

"The objects of the association can be fully attained under the general act providing for the incorporation of societies or clubs for social, gymnastic, esthetic, musical, yachting, fishing, batting or lawful sporting purposes, which received my signature on the 11th instant."

The bill was not passed over the veto.

April 14. To the Senate:

Veto of a bill entitled "An act to authorize the Dry Dock, East Broadway, and Battery Railroad Company to extend their railroad track, and to authorize the Ninth Avenue Railroad to use a portion of the same."

"The bill authorizes the Dry Dock, East Broadway and Battery railroad company to extend their road with a double track from Greenwich street through Desbrosses street to the North river, and with a double track from Greenwich street through Cortland street to the North River, with the necessary turnouts and switches for the working of such extensions. In addition to these extensions of their track, this bill proposes to give to the company the right to purchase the 'horses, stages, and other materials now used by the Telegraph Stage Company,' in running a line of stages from Grand Street ferry to Cortland Street ferry; and upon payment for this property, the bill proposes to vest in the railroad company not only title to the 'horses, stages, and materials,' which they have purchased, but also all 'the rights, franchises, and privileges belonging or appertaining to the said line of stages.'

The bill further provides that the stages are then to be withdrawn from the streets and avenues now used and traversed by them, and the said railroad company are authorized and required, within one year from the time such stages, 'or any of them,' are withdrawn, 'to lay, construct, operate and use a railroad with a double track through, upon and along the route or routes, streets and avenues now used and traversed by the aforesaid stages,' excluding, however, from the operation of such grant, the street known as Broadway.

It will be observed that, while purchasing only 'horses, stages and materials,' this railroad company still becomes vested with 'all the rights, franchises and privileges be-

longing or appertaining to the said line of stages.' What are these rights, franchises, &c., and what privileges appertaining thereto, and vested in said stage company would be transferred to said railroad company upon such contemplated purchase being perfected? Before sanctioning any such transfer, it seems to me that the provisions of the bill should specify what these ' rights, franchises and privileges ' are, that we may be able to judge whether it would be right to permit such transfer from a stage company to a railroad company, to be used and enjoyed by them, and whether the rights of the citizens affected thereby would be protected.

Again, another very strong reason which induces me to withhold my approval from the bill is this: It proposes to give to the railroad company the right ' to conduct, operate and use a railroad with a double track through, upon and along the route or routes, streets and avenues now used and traversed by the Telegraph Stage company,' with the exception of the street known as Broadway. Upon the face of the bill, it does not appear what ' route or routes, streets or avenues ' are traversed by this stage company except that it was from Grand street ferry to Cortland street ferry. A grant of a railroad franchise in a city, on a route and through streets not specifically defined, is a novelty in legislation, as unprecedented as it is wrong, and may be injurious. In bestowing such a valuable franchise, especially when it is a mere gratuity, it seems to me it is our duty to define precisely what is intended to be granted; that we are hardly warranted in permitting a railroad company to lay double tracks of rails over a route and through streets which are not particularly designated, and vesting in such company the ' rights, franchises and privileges ' concerning the value and extent of which we have no knowledge.

The present condition of public finances, and the in-

creased burdens of taxation which already press upon the people, plainly demand a prudent husbandry of the resources of the State, on the part of those responsible for the management of its affairs. It becomes the servant of the people to employ all legitimate means for replenishing the treasury; whether national, State or city — and it is therefore the suggestion of prudence that, in the disposal of these valuable franchises the Legislature should either consult the convenience of the traveling public by allowing only a rate of fare proportioned to the profitable character of the enterprise; or, if a higher rate is fixed, the public treasury should be benefited by the gains accruing from these gifts.

By the second section of the bill, the provisions of sections 2, 3, 4, and 5, of chapter 512, of the Laws of 1860, are made to apply to construction, operation, and use of the railroad extensions authorized by this bill. These embrace all of that act except the first section, which merely names the grantees and defines the route. Upon examination, I find that act deficient in provisions, which, in my opinion, should be embraced in all laws of a similar character as well as containing provisions, which, to my mind, are open to serious objections."

The bill was not passed over the veto.

April 15. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 15, 1865.

"It becomes my painful duty to announce to the Legislature the death of Abraham Lincoln, the President of the United States.

It is with emotions of profound sorrow that I make this announcement to your honorable body. Such an event is a

national calamity; and under the circumstances now attending this bereavement the nation weeps with heightened anguish. To be deprived of his wisdom, experience and counsel at a time when most important to return us securely to national peace, fraternity and prosperity; at a time when the gigantic war which confronted him at the threshold of his administration is about drawing to a close, and a final deliverance obtained from our civil disturbances, for which we have sacrificed so much; is a calamity that will cause the deepest sadness and gloom to the millions of our land and to the friends of freedom throughout the world. Thus, it is the third time in our history the Republic is subjected to this trial; but it is hoped that our good cause and country, watered by a nation's tears and sanctified by its prayers will pass in safety through the ordeal of a higher life and destiny.[24]

I have also to communicate to you the sad intelligence that our noble Secretary of State, an honored and favorite son of New York, William H. Seward, was likewise a victim of the tragic plot of the assassins, and now lies in an unconscious condition. May God spare his life to the nation.*

R. E. FENTON."

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[24] See *post*, p. 676, for note on the death of President Lincoln.

* In connection with the resolutions adopted on the death of the President, the Legislature adopted the following resolution relative to the assault on Secretary Seward:

"That to the Hon. William H. Seward, Secretary of State, we tender our sympathy in his offerings, and our hope for his speedy recovery, and we assure him that the murderous attempt to remove him from his sphere of usefulness has only strengthened him in the love and confidence of his countrymen."

Mr. Seward recovered from his injuries, and after several months resumed his duties as Secretary of State.

April 18. To the Senate:

Veto of a bill entitled "An act to provide for repairing and keeping in repair the carriage ways and paved and macadamized streets within the city of Albany, and to raise the amount of the expense thereof by tax, and to fix the salary of the Superintendent of Streets.

"It is provided by the first section of this bill, that the expense of repairing and keeping in repair the pavement on the carriage ways of any and every portion of any paved street, including the repairing of crosswalks and the carriage ways of all macadamized, earth, or planked streets within the city of Albany, and Clinton avenue adjoining the same east of the west line of Allen street, shall hereafter be a charge upon the city, and the amount thereof shall be annually raised by general tax, which by the third section, the supervisors are required to levy.

The second section requires the common council immediately after the passage of the act to provide for contracting for not less than three nor more than five years, for the furnishing of materials and for doing all the work necessary to accomplish the purposes named in the first section of the bill, and authorizes the common council by a two-thirds vote to cause any street or part thereof to be repaved or relaid with Buffalo, Belgian, trap-block or cobblestone pavement.

The fourth section requires the common council to provide for the repairing and relaying of the sidewalks, and contains some provisions for giving the owner notice of the repairs, in cases where the expense is to be assessed upon the property benefited thereby; but by a two-thirds vote the common council are authorized to direct the repairing and relaying of all sidewalks, under the provisions of the first and third sections of the bill, except when they are repaired by relaying the same, in whole or in part, with new flag stone or plank.

The fifth section makes the laws and ordinances in force, in respect to assessments for street work, applicable to the work contemplated by the fourth section. The sixth section increases the salary of the superintendents of streets, and the seventh repeals and abrogates all inconsistent laws and ordinances.

It is clear that the provisions of this bill contemplate a change in the present system of repairing and improving the streets of the city, and providing for the expense thereof. By existing laws, these expenses are mainly charged upon and apportioned between the owners of property immediately benefited by improvement. The bill proposes to charge this expense upon the property of the whole city.

By inspecting the map of the city, and from the best information that I have been able to obtain, it appears that Allen street is between two and three miles from the compact part of the city, and in the space intervening the streets have only to a very limited extent been opened and worked.

The provisions of this bill not only authorize, but direct the common council at once to enter into contracts, which may run for five years; providing for materials and labor necessary to open and grade every unopened street within the city limits east of Allen street, and they may be paved at the expense mainly of the owners of property in the compact part of the city, who are not directly benefited thereby, and who have, under existing laws and ordinances, been assessed for street improvements adjacent to their property.

The provision requiring the common council of the city to immediately enter into contracts which may run for five years for furnishing all the materials and doing all the labor necessary for repairing, relaying, or repaving all the streets of the city, seems to me extremely unwise and improvident in any possible view of the question, and is one

under which onerous burdens may be unnecessarily imposed upon the property of the city without corresponding benefit. The period of five years, to say the least, is objectionable, by reason of the unsettled values of labor and materials for the making of contracts therefor, and at variance with municipal economy.

As I have before stated in my view of the provisions of this bill, it is calculated and designed to effect a marked and unwholesome change in the manner of providing for the expense of municipal improvements. The policy hitherto has, I believe, been quite uniform throughout the State to charge such expenses upon the property benefited, and I am not able to perceive any sufficient public reason for changing it with respect to the city of Albany; and as it appears to me the present bill, if it becomes a law, is likely to work great injustice, I cannot give it my sanction."

The bill was not passed over the veto.

April 18. To the Assembly:

Veto of a bill entitled "An act amending and extending an act passed March 19, 1813, and extended April 20, 1835, authorizing the erection and maintaining of a dam across the Susquehanna River."

"The third section of this bill provides that all damages sustained in consequence of the exercise of the rights and privileges thereby granted, shall be ascertained and assessed by three commissioners to be appointed by the county court, on the application of the grantee or the parties aggrieved. This section is an assumption of the right to deprive persons of property, without their consent, for private uses, a doctrine wholly repugnant to that clause of the sixth article of the Constitution, which declares that no person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for

public use without just compensation.[1] The Legislature can only exercise such powers as are expressly delegated; and it has been strongly held in the highest courts of the State, that private property can be taken as contemplated in the proposed act only for public use.*

It then remains to determine if the property that may be taken under the provisions of this bill, is in any sense for public use. The fourth section provides that the act shall be deemed and construed to be a public act, and the land flowed, or to be flowed with water, as therein provided, is declared to be taken for public use. Does this section create a dedication of the land to the public use? I cannot resist the conviction, that it is a nugatory provision, the franchise being granted to a single individual, his heirs and assigns. Upon an examination of the previous acts of which this is an extension, I find that the act of 1813 made the consent of the owners a condition precedent of the taking of the land, while the act of 1835 was restricted in its operation. In my opinion the salutary provisions of these acts should have been re-enacted in this, and I should then have felt at liberty to give it my sanction."

[See special message of April 24, withdrawing the veto.][25]

April 18. To the Assembly:

Veto of a bill entitled "An act for the increase of fares on the Street railroads in the counties of Erie, Albany and Rensselaer."

"The right and the duty to furnish relief in certain cases, no one can doubt, and I deem it wise and proper that each case of varying circumstance and condition should

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[1] Const. 1846, art. 1, § 6.

* See Jackson ex dem. McCloughry v. Lyon (1824), 9 Cow. 664; Re John & C. Streets (1839), 19 Wend. 659; Powers v. Bergen (1852), 6 N. Y. 358.

[25] The bill relating to a dam across the Susquehanna river was returned to the Governor, signed by him, and became a law, chapter 557, on the 24th of April.

rest wholly upon its own merits, unaffected as it is unconnected with any other. Upon examination, it seems to me that the roads mentioned in the bill differ in the measure of relief required, and it may be questioned whether some of them are properly objects of relief at all. Care should be exercised in establishing precedents in this extraordinary period, which may embarrass future legislation, and the application of which, upon a return to a normal condition of expenses and values, may prove an unjust burden upon the people. One of the plausible reasons urged upon the Legislature for the passage of acts granting railroad franchises was that the construction of the roads would benefit the laboring class of people — that those of moderate means would have facilities which hitherto had been practically denied them — and the property owners along the routes were more easily reconciled, on the ground that the interests of the laboring classes were to be subserved thereby. I am unwilling to consent to any very general disturbance or change from the rates then fixed after mature deliberation (except in special and extraordinary cases), until the return of business and values to the settled and ordinary channels, which I confidently hope is not far distant."

The bill was not passed over the veto.

April 18. To the Assembly:

Veto of a bill entitled "An act to incorporate the Father Mathew Total Abstinence Benefit Society Number Six of the city of New York," and a bill entitled "An act to incorporate the Young Men's Father Mathew Total Abstinence Benefit Society Number One."

"The avowed objects of these associations are the promotion of temperance and the accumulation of a fund for the relief of their sick or disabled members, with both of which purposes I am in cordial sympathy; but I am unable

to see in what manner these worthy ends are subserved by special acts of incorporation, as measures of reform and benevolence mainly derive their character and importance from the motives of men, and not from strict legal obligation. My principal objection, however, is one that lies against most bills of this character, viz: the growing tendency to multiply corporations by means of special enactments. The facility of procuring this class of legislation tends to foster what may well be termed a lust for incorporation that extends to societies of a private and social character. I have given my approval to one bill having the same general object, on the presumption, that in the opinion of the Legislature, the objects thereof could not be attained under general laws; but their multiplication convinces me that the rule of the Constitution, requiring corporations to be formed under general laws, should be more strictly adhered to.[1] I desire to encourage all healthful reformatory projects, and if these societies cannot avail themselves of the liberal provisions of the general act of the 11th inst., which provides for the incorporation of societies or clubs of a similar nature, it is hoped the Legislature may enlarge the scope of this general law, so as to meet the requirements of cases of this description."[26]

April 21. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 21, 1865.

"In compliance with a resolution of the Senate passed this day, I herewith respectfully transmit a copy of the remonstrance of the citizens of Albany against the bill en-

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1 Const. 1846, art. 8, § 1.

26 The Father Mathew Total Abstinence Society bills were not passed over the veto, but chapter 368, providing for the incorporation of societies or clubs for certain social and recreative purposes, was amended by chapter 668, substantially in accordance with the Governor's suggestions, authorizing the incorporation of temperance and benefit societies.

titled 'An act to provide for repairing and keeping in repair the carriageways in the paved and macadamized streets within the city of Albany, and to raise the amount of the expense thereof by tax and to fix the salary of the superintendent of streets.'

R. E. FENTON."

[See veto message of April 18.]

April 24. To the Senate:

Veto of a bill entitled "An act to authorize plankroad companies and turnpike road companies to demand and collect additional tolls."

" The present law in relation to turnpike and plankroads, especially to the former, was the result of years of observation and experience, and an average rate of toll was established which was regarded as a fair compensation to corporations for the benefit which the public derived from such investments. Capitalists who built roads under this law, doubtless expected, in one way or another, to reap a fair compensation for the capital employed. But neither the Legislature nor the public guaranteed this. They, knowing the rates, invested at their own risk, and with the same results that characterize almost every system of investment. Many roads, in eligible locations, under good management did pay fair dividends; others were built where no reasonable expectation could have at any time been entertained of profit from the investment, other than the convenience of the people on the line, and the increase in value of property in the vicinity. Not unfrequently the rapid development of one section has made all the difference between a poor investment and a good one.

On the other hand, the changing currents of traffic have in many instances set at naught the most sanguine and justly founded expectations of profit.

The Legislature has not refused to take action in such extraordinary cases. Its general legislation has not been

regarded as fixed and unchangeable, but it has from time to time granted special relief adapted to the peculiar circumstances of each case. This is just within proper limits. The public, while protecting itself from undue burdens and imposition, should deal liberally with those who risk their capital for its benefit. But this bill proposes a new rate almost as general in its application as the one which now defines the rates of toll.

And this change is not claimed as the result of a series of years of experiment, demonstrating that the present rates are, on a fair average, too small; upon such experience as that which resulted in establishing the present rates, but is predicated upon the dividends, I am led to suppose, of a single year, and that year a most extreme and exceptional one. Any system of permanent investment which has paid during the last year or two, six per cent. net profit, must, under ordinary circumstances, have declared very handsome dividends. The injustice of such a rule would be very clear to these corporations, if the public — with equal rights in these matters — should insist that the rates of fare should be adjusted with reference to a year of unparalleled prosperity and large gains.

I have before remarked, that corporations should be dealt with liberally, but likewise the interests of the public should be guarded with watchful care. Corporations are, from their very nature, powerful to influence and control, and are in no wise devoid of the selfishness common to human nature. They are usually composed of the shrewdest business talents of a community,— commanding comparatively large amounts of capital, reduced to unity of purpose, and action, and prepared to take prompt advantage of every circumstance in their favor.

On the other hand, it takes time to direct the united attention of a community to any action proposed with reference to its interests, and longer time to organize public sentiment into a power of resistance. A just appreciation

tion of these facts, secured the incorporation into the Constitution of a clause requiring corporations to be organized with reference to a general law.[k] The same consideration for the safety of the public, it seems to me, demands that a change in a general law or regulation, should only be made as the result of extended experience.

It is impossible to adjust by legislation the incomes derived from permanent investments, in times like these, to the mutations in the price of labor or material, for these are disproportionally affected by the present abnormal condition of things. I need only cite to you the frequent and violent fluctuations by which both have been disturbed in the last four years — fluctuations which have brought in one month unparalleled prosperity, and in the next threatened disaster and ruin to almost every business interest in the country. The immunity of these permanent investments from such extremes, is an important element in their value. The experience of years has demonstrated to the holders of such securities that the diminution of one year, or series of years, is repaid by the extra profits of another. When these calculations are overborne by practical tests and experiences, then a fair claim may be presented for increased privileges.

It seems to me, that the proper guide by which to judge of the value of one system of permanent investment, in times like these, is by comparison with other investments of like character; and if it is found that all alike suffer, it may be safely surmised that each is bearing no more than its share of the burdens which, at one time or another, in one form or another, fall upon every business interest in such anomalous periods as these; and which, by the laws of intercourse and trade, are very likely to correct and adjust themselves sooner and better than can be done by legislative enactments.

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[k] Const. 1846, art. 8, § 1.

It is worthy of remark, that since this subject was agitated, values have depreciated nearly if not quite equal to the per cent. by which it is proposed to increase the tolls by this bill."

The bill was not passed over the veto.

April 24. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 24, 1865.

"Upon further review and examination of the bill entitled 'An act amending and extending an act passed March 19, 1813, and extended April 20, 1835, authorizing the erection and maintaining of a dam across the Susquehanna river,' and the legal and constitutional questions involved, I am led to doubt the correctness of the positions taken in my message of the 18th inst.

That I may do no injustice to the rights of parties and the interest in question, I deem it proper to make this communication, and thus, so far as I can, remove any obstacle I have interposed to prevent the will of the Legislature previously expressed, becoming law. Persons or parties aggrieved, will not be prevented thereby from testing the question before the courts.

I therefore respectfully request your honorable body to permit me to withdraw my said message containing objections to the bill. [See note 25.]

R. E. FENTON."

April 28. To the Senate:

Veto of a bill entitled "An act relating to the New York Central Railroad."

"When the law to consolidate the several railroads connecting the cities of Albany and Buffalo was projected, its passage was urged because it would largely facilitate the transit of passengers and freight between the west and the

commercial metropolis. The argument in favor of the measure was confined almost exclusively to the supposed advantages which would accrue to the public, and to the people of the State from the reduced cost necessarily resulting from unity of management.

An examination of the various acts shows that the legislation of the State has been greatly influenced by the considerations which were urged in favor of the act of consolidation.

The charters of some of the roads first authorized, contained provisions which restrained them from carrying freight of any kind. The alleged necessity of protecting the State revenues by preventing competition with the Erie canal, was the published justification of these restrictions. A few years of experience, however, clearly demonstrated the error of this position. It came to be understood that a decrease of the revenues of the State canals might be the less of two evils, and that enhanced values of real estate could be more safely relied upon as a resource from which the expenses of the government should be derived, than the uncertain and limited receipts resulting from the imposition of tolls upon commercial articles in transit between the consumer and the producer.

In accordance with the teachings of experience, and in response to the demands of the people, the Legislature has, from time to time, removed the restrictions which virtually gave the Erie canal a monopoly, of the business of transmitting merchandise and produce. By the provisions of chapter 335 of the Laws of 1844, the Utica and Schenectady railroad company was authorized to transport 'goods, chattels and other property that may be offered for transportation, during the suspension of canal navigation only,' and 'shall pay to the Commissioners of the Canal Fund, the same tolls per mile, on all the goods, chattels and other property so transmitted, as would have been paid on them had they been transported on the Erie canal.' The same

act which thus removed the prohibition to carry freight, provided that the railroads west from the terminus of the Utica and Schenectady railroad should have the privilege of carrying local freight, without being subjected to the payment of tolls. By the provisions of chapter 270, laws of 1847, the 'Utica and Schenectady railroad company, are authorized to take and transport upon their railway all goods, chattels and other property that may be offered for transportation,' and by the same act, the same privileges were given to the connecting roads — thus yielding the right to carry freight throughout the entire year, upon the condition that such freight should pay to the State the same tolls to which they would have been subjected had they been transported on the canal.

By the provisions of chapter 497 of the Laws of 1851, the Legislature provided that 'it shall not be necessary for any railroad company in this State to pay any sums of money into the treasury of this State, on account of the transportation of property on any railroad on and after the 1st day of December, in the year 1851,' thus finally removing all restrictions upon internal commerce, and in obedience to the demand of trade permitted this withdrawal from the revenues of the canals that the people might enjoy the benefits of cheap intercommunication. The process by which this result was attained, was gradual but sure, and shows plainly that those who, from time to time, gave these measures their official sanction, were actuated by a sincere and enlightened determination to secure to the people all the advantages possible to be derived from cheap and rapid transit.

The Legislature of 1853, following the established precedents, and apparently prompted by the same motives which had marked the actions of their predecessors, removed the obstacle which stood in the way of a full realization of the benefits to be derived from the policy previously declared. By consolidating the several corporations, it secured the

advantage of centralized direction. In consideration of this final and advantageous concession, the Legislature of 1853, only exacted that ' when two or more of the railroad companies named in this act are so consolidated, said consolidated company shall carry way passengers on their road at a rate not to exceed two cents per mile.' In making this restriction, the Legislature adhered to the policy of the State as previously expressed and secured the same by positive enactment,—while it removed every form of restriction which could enhance the cost of transportation, it protected the rights of the public, by limiting the price which should be exacted.

By the provisions of the act herewith returned, it is sought to reverse the legislation of 1853; to change the policy which seems to have been developed by previous legislation and to impose a higher rate of fare upon the people who may find it necessary to pass over this line of the Central company.

The reason given to the public for this proposed increase of cost, is the alleged inadequateness of the compensation, which by implication asserts, that the revenues of the company do not afford a just and fair return for the capital invested. After a careful examination of the history of this company, I do not find anything to warrant this statement. The official returns made from year to year to the State authorities, under the requirement of the General Railroad act, show that the income on the nominal capital invested is larger than the interest paid by the National or State governments, and also larger than the interest permitted to be paid for the use of money by the laws of this State. I have reason to believe that nominal capital and the indebtedness is in excess of the cost of the property owned by the company, so that the dividends earned on the real capital invested have been more than those declared by any corporation of a like character in this State.

This admitted prosperity is sought to be qualified by two declarations:

1st. That the profits thus earned are accumulated from the charges imposed on freight, while passengers are carried at a loss.

2d. That the apparent success of previous years does not exhibit the present condition of the road, because its previous operations were carried on during a period when most if not all the articles consumed by the company could be obtained at a cost much less than the prices now paid.

In connection with the first of these declarations, it is intimated that if the State shall refuse to accede to the proposition to impose a higher rate of fare on way passengers, the alleged loss sustained on that class of traffic, must be made good by an additional imposition upon freight.

Admitting the propriety of making each class of business respectively remunerative, what guaranty is given that increased charges on freight will not be enforced as well if this bill shall become a law, as if it shall fail? There is no provision in this bill to protect forwarders of freight from additional burdens, even though passengers may be made to bear a greater proportion of the cost of operating the road.

The practice which now prevails to such an extent, of neglecting the demands of way traffic until it is compelled to employ intermediate agents — in the form of express companies — at greatly increased prices, admonishes us to be watchful that no more discretion is given to any corporation than is demanded by justice and a settled purpose to afford to such enterprises a generous and satisfactory return for the capital invested and the risk incurred.

I cannot concur in the further suggestion advanced in justification of this bill. It may be true that the finances of the company have been depressed, through causes resulting from the disturbed condition of the country; an

examination, however, of the last annual report of the company, for the fiscal year closing on the 30th day of September, 1864, shows its operations to have been quite successful.

In addition to a dividend of nine per cent, free of government tax, it has earned or paid on account of its funded debt and for sinking funds and including its cash balance over half a million of dollars. It had also largely increased the quantity of its rolling stock and had sustained no alleged loss through deteriorations of any kind — so that the stockholders, in addition to the cash dividends paid them, had a very considerable increase in the permanent value of their property.

But admitting that for a few months the company has not accumulated so rapidly as in years past, because of the enhanced value of labor and the cost of materials, should we for that reason impose a higher fare and so change the wise and judicious policy of the State? I think not. Since the outbreak of the rebellion all branches of industry; all investments of capital, have been subjected to the same or greater vicissitudes. Labor has been less rewarded while the cost of the necessaries of life have been largely increased. Capital invested on bond and mortgage has not paid much more than an average of six per cent interest although liable to taxation by town, municipal, county, State and National authorities, and it is probably within bounds to say that not more than four per cent net increase has been earned by capital thus invested during the past four years. Examples of a like character might be drawn from almost every use of capital.

Should the enhanced prices complained of, continue to prevail, and the managers be thereby forced to forego the declaration of a dividend, the stockholders would not then be called to endure a burden more oppressive than has been sustained by many corporations which have not had relief extended to them by legislative enactment. But it is improbable that such enhanced values should long prevail.

The rebellion has been substantially crushed; order is being rapidly restored, and in a short time the country will be again blessed with peace. With its return it is safe to assume that there will be an increase in the number of laborers and a decrease in the cost of material. The west will continue to be the great producing country of the world. Emigration will continue to people its hills and valleys. Our commerce will again cover every sea. A large proportion of this commerce and the thousands that will come from Europe, must or will pass over this great central route, and this corporation more than any other, must share in the prosperity to which our country is destined. Let us patiently await the fulfillment of that destiny, in the confident trust, that in a short time, the prosperity of the company will be secured without further burdens upon the traveling public. If experience shall not prove the embarrassments under which it is said to labor, to be but of a temporary character; and if the proposed reforms in its future management shall not secure to capital an ample recompense, I shall then be most willing to co-operate with the Legislature in affording such relief as may be wise and necessary."

The bill was not passed over the veto.

April 28. The Legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

NOTE.— The Executive records contain the following memorandum showing the disposition of certain bills by Governor Fenton on the 20th of May, 1865. Paragraph heads have been inserted by the Editor.

FINAL CLOSING OF INCORPORATED BANKS.

"I have not approved the bill entitled 'An act to provide for the final closing of incorporated banks,' passed by the Legislature at its late session. By chapter 138, Laws of 1854, all incorporated banks are required to return their

circulating notes to the Superintendent of the Banking Department for destruction, one third part in one year, one third part in two years, and the remaining one third in three years from expiration of the charter. If the first and second instalments are not so returned, a cash deposit with the Superintendent is required to be made equal to the deficiency. For the third instalment no deposit is required, and the notes are returned at the convenience of the bank. It appears by the last report from the Bank Department that the outstanding circulation of incorporated banks, whose charters had expired, was, on the 30th of September, 1864, $2,818,701. Of these banks all but ten would come within the provisions of the present bill, and hence all liability for the circulation issued by them might be extinguished in two years, and the loss thrown upon the community. There being no penalty attached to the circulation of these notes and no inducement for their return in the nature of a cash deposit, the obvious interest of the banks would be to keep them outstanding until the expiration of two years, when all further liability for their redemption would cease. It seems to me this bill is unnecessary, because by Chap. 236, Laws of 1857, any bank, after having redeemed ninety per cent of its outstanding circulation (at the time of the expiration of its charter, or of notice of closing business) may make a cash deposit with the Superintendent, and after due notice and the expiration of six years, may cut off liability for the circulation not presented for redemption out of the fund thus deposited. The Legislature at its recent session, amended this act so that the notice can be given when seventy-five per cent of the circulation outstanding, as above mentioned, has been redeemed. This brings the provision within the reach of all and obviates a difficulty which has heretofore existed in regard to some of the older banks. The bill is moreover objectionable because it extends privileges to incorporated banks which are not granted to banking associations and

individual bankers. These would still be obliged to comply with the law of 1859, by making a cash deposit and conforming to the other regulations as to time, which that law imposes. It is manifest that the bill is an innovation upon the general policy of past legislation on this subject, under which many banks have already taken advantage and are now closing up their liabilities. A large amount of currency issued by expired and closing banks is still in the hands of the people. Experience demonstrates that, while the circulation comes in slowly, a very small percentage is finally lost. The most ample security, and the longest practicable period for its redemption ought to be allowed to the community. The existing laws seem to me fair towards the banks, and experience does not, in my judgment, indicate a necessity for breaking through the safeguards and restraints which have heretofore been deemed proper for the protection of the public.

Second Avenue Railroad Co.

Third Avenue Railroad Co.

I also do not approve of the bill entitled 'An act to confirm the ordinance of the Common Council of the City of New York, authorizing the Third Avenue Railroad to run cars and extend their tracks,' and the 'Act to authorize the Second Avenue Railroad Company in the City of New York to construct new tracks.' In some respects these proposed enactments are liable to the same objections which precluded my signing the bill 'To authorize the Dry Dock, East Broadway and Battery Railroad Company in the City of New York, to extend their railroad tracks and to authorize the Ninth Avenue Railroad to use a portion of the same,' and which were presented in my message to the Senate on the 14th of April last. It is sought by these bills to obtain permission for companies to extend the tracks of their roads, and to secure new and different termini in ad-

dition to those now respectively enjoyed by them. In order to obtain this privilege, they must necessarily increase the interference with the carriage way of some streets, already obstructed to an extent which has greatly abridged the purposes to which they were originally dedicated. Remonstrances have been presented against these bills numerously signed by reputable and influential citizens of the City of New York. The argument presented in their favor is based upon the assumption that the public would be benefited through the increased facilities afforded. In a measure this may be true, but should valuable and additional grants and privileges be conferred upon corporations whose routes were fixed by former agreement with the Common Council of the City of New York and ratified by State legislation, to an extent to add additional tracks in streets already occupied, and to occupy other streets resulting in an interference with accustomed communication and business, and in effect to authorize the construction of new and additional routes, without some compensation to the city treasury, or equivalent in the way of reduction of fare? I think not. On this point, I repeat the views expressed in my message of April 14th already referred to: 'The present condition of public finances and increased burdens of taxation, which already press upon the people, plainly demand a prudent husbandry of the resources of the State, on the part of those responsible for the management of its affairs. It becomes the servants of the people to employ all legitimate means for replenishing the treasury, whether National, State or City, and it is therefore the suggestion of prudence, that in the disposal of these valuable franchises the Legislature should either consult the convenience of the traveling public, by allowing only a rate of fare proportioned to the profitable character of the enterprise, or, if a higher rate is fixed, the public treasury should be benefited by the gains accruing from the gifts.'

Metropolitan Railroad Company, Broadway Tunnel.

Neither can I approve the 'Act to authorize the Metropolitan Railroad Company of the City of New York, to construct a tunnel under Broadway and for other purposes.' This bill appears to have been elaborately drawn and seems to have provided against any improper infringement of private rights. I am inclined to think that the structure contemplated, or something occupying the same prominent route from the foot of Broadway to the upper part of the city, may be made practicable and may be deemed necessary. Rapid access to and from the business center of New York is of vital importance, and it is not improbable that some more systematic, direct and well guarded measure will finally be inaugurated. My objections to this bill are, that although a specified route is laid down, there is no requirement that the road thus authorized shall be speedily completed. There being no obligation that it shall be constructed with reasonable rapidity, (the general railroad act allowing five years for the construction of the road from the date of its commencement,) it might be possible that through financial disasters, or other causes, the central thoroughfare of our commercial metropolis would be obstructed or unsettled for a vexatious period. Even should the work be vigorously prosecuted Broadway must be rendered at intervals, and for short distances, for a long time, unpleasant and uncomfortable to travel and business, and it seems to me therefore, that the Legislature should have provided against the contingency of prolonging the inconvenience through the financial vicissitudes to which such enterprises are too often subjected. But a controlling objection to the approval of this bill is found in section four, which authorizes the transfer of State and city property for the use of this Company. It reads as follows: 'The Mayor, Aldermen and Commonalty of the City of New York, are hereby authorized to permit the use by said Metropolitan Railway Company, of

such portion of any lands heretofore granted by the people of the State of New York, to the said Mayor, Aldermen and Commonalty or of such other public lands or places in the said City, as they may deem proper to allow the said company to occupy either temporarily or permanently for the public convenience in the construction, operation and use of the said railroad and tunnel, and upon such terms, and under such regulations as may be prescribed by the said Mayor, Aldermen and Commonalty.' By the provisions of that portion of the section cited it will be perceived that the whole of the Battery, if so much shall be deemed necessary, which is in one sense, the property of the State, may be converted into a passenger and freight depot. The same use might be made of the other public parks and places of the City along or near the contemplated route. I can see grave objections to such a diversion of the parks or public grounds which are designed for the benefit of the people, and which are essential to their health and conducive to their pleasure. I cannot consent on my part to such use of these grounds without feeling that I have violated the trust reposed in me by the people.

Pneumatic Railway and Express Company.

The 'Act to authorize the formation of a Pneumatic Railway and Express Company in the City of New York' is liable to all the objections I have urged against the bill last named. Section one of the Act gives authority for the construction of a Pneumatic railroad from a point at or near the General Post Office, through Nassau and Chatham streets, the Bowery and Fourth avenue to Thirty-second street, or any street most convenient between Thirty-second and Twenty-seventh streets, inclusive, to the Tenth avenue, through the Tenth avenue to Washington or Greenwich streets, and thence through either of these streets to the Battery and South Ferry and thence through Broad or Nassau streets to the place of beginning. Section four

refers to the routes defined in section one and adds such streets 'which the Department charged with the proper maintenance of the water mains, sewers and pavements of the city of New York shall assent to.' Under this latter section it would be competent for two persons to authorize the construction of this road through every street in the City. Section one declares the purposes of this pneumatic railroad to be the conveyance of goods, merchandise, property and mails, thus conveying the impression that it is intended exclusively for such service, and not for the conveyance of passengers. Section eight of the bill provides that 'This corporation is hereby declared to be and is a railroad corporation within the meaning of the Act entitled 'An act to authorize the formation of railroad corporations and regulate the same,' passed April 2, 1850, which is the General Railroad act. After such a declaration, I see nothing to preclude this corporation from constructing and operating a passenger railroad. Section six contemplates the same diversion of the battery and other public places as is contemplated by section four of the bill last referred to, entitled the Metropolitan Railroad, &c.

Manhattan Gas Company.

I am also constrained to withhold my approval of an Act 'to amend section two of Chap. 543, of the Laws of 1855, entitled 'An act to increase the capital stock of the Manhattan Gas Company of the City of New York.' This bill proposes to repeal 'for a period of two years,' the clause of the Act of 1855, which limits the charge the Manhattan Gas Company can make against the consumers of gas to a price not exceeding two dollars and fifty cents per one thousand cubic feet. I do not find that any person has solicited this act except the stockholders of the Manhattan Gas Company, and the argument used in favor of this legislation is the alleged inadequateness of the compensation consequent upon the enhanced values of material and labor. If this declaration was justified by the facts, I should be as

reluctant to admit its validity as in the parallel cases presented by the plank road companies of the State, the horse railroad companies of the counties of Albany, Rensselaer and Erie, and by the New York Central Railroad Company. The general reasons, having reference to time and circumstances, which led me to withhold my signature from the bills providing for the relief of these several corporations, are mainly applicable to this measure, and prevent my approval thereof. It is possible, even applied to this case, they would have still greater force, for the additional burden which would be authorized by this act would fall upon many thousands, all of whom have been subjected to the same enhanced costs, many of whom have made the same sacrifices to the necessities of the day, and cannot well afford to pay the prices now charged, and must labor many weary hours by artificial light to gain even a subsistence. This latter class of persons constitutes, I suppose, a considerable portion of the customers of the Manhattan Gas Company, and if that corporation was obliged, through causes which have alike affected almost every interest during the past four years, to supply light to them at the cost of production for a short period, it would not be a greater hardship than many of the pursuits of industry and the investments of capital have endured and which have not obtained legislative relief. Is not this plea of non-remuneration applicable to its condition for a short period only? While this bill has been before me for consideration, the price of one hundred and eighty dollars per share has been offered for the stock of this Company, according to the report of the sales at the Stock Exchange in the City of New York. A company which can obtain a premium of eighty per cent on the par value of their stock, must have had a gratifying past financial history or a prospective prosperity, even under the restrictions imposed by the Legislature of 1855. I cannot, therefore, consent to give my sanction to an act to increase the pecuniary welfare of an organiza-

tion whose prosperity is thus substantially affirmed, and which so largely affects the mass of population in one of the necessaries, as well as comforts of life.

Knickerbocker Gas Company.

The 'Act to incorporate the Knickerbocker Gas Company' in the City of New York, is subject, among others, to the same objections, which I have entertained against many bills of a similar character, and does not have my approval. All the legitimate purposes of such a corporation can be obtained under the general law. There are other and prominent objections to be found in the several provisions of the bill, and especially in the fact that the manner of using the streets of the City, as well as the streets which shall be used, is left entirely to the discretion of the Company, thus evading the supervision of the municipal authorities, and permitting the company to compete with others for the custom of the great thoroughfares without being burthened with the necessities of supplying the sparsely settled portions of the city.

Legalizing Military Bounties.

I also withhold my assent from the 'Act to legalize and confirm any acts or proceedings heretofore passed or adopted by any county, city or town in the State, relative to raising or paying bounties, and to confer additional powers on Boards of Supervisors.' The provisions of the bill are broad and sweeping, and the public interests it affects are of the greatest magnitude. It assumes to legalize, ratify and confirm every act, resolution and proceeding at any annual or special town meeting held prior to the 11th of February last in relation to paying bounties or raising money to pay volunteers, drafted men, substitutes or persons furnishing substitutes, or to defray the expenses of raising volunteers. It proposes also to legalize, without discrimination, every act, proceeding and resolution at any

meeting prior to that date, of any board of town officers, of the Common Council of any city, or the board of supervisors of any county, relative to either of those objects, or the payment of commutation money, the issuing of bonds or other obligations or the levying of taxes for any of these purposes; and all acts of county treasurers in issuing bonds or making payments for similar objects. It declares not only that the moneys raised, and the bonds actually issued, but also the bonds authorized to be issued for these purposes are legal debts and charges against the respective towns, cities and counties; and it provides that all moneys necessary to pay the same with interest, as they become due, shall be levied and collected according to the directions of the resolutions thus legalized, from the taxable property of the towns, cities and counties, in which such moneys may have been raised otherwise than by tax; but these provisions are not to be construed as confirming acts vitiated by official fraud or falsehood, nor as affecting pending suits, nor as authorizing parties furnishing substitutes to collect more than they paid, nor as legalizing bonds issued in violation of the volunteer bounty acts of 1864, except so far as they have been appropriated to some of the purposes above enumerated. The subsequent sections of the bill embody provisions, unobjectionable in themselves, but furnishing no adequate remedy or relief to the taxpayers, in respect to such charges as have been imposed upon them in violation of law, and which the first section of the bill is designed to legalize and confirm.

The practical effect of the bill is to charge upon the taxable property of each locality in the State, everything having the semblance of official sanction as a debt, for any of the purposes specified, though incurred not only without authority, but in open violation of law. The exception of cases in which direct fraud may be brought home by proof to the official actors, is of little practical importance — as responsibility for corrupt practices connected with the bounty frauds would, it is presumed, be evaded by the

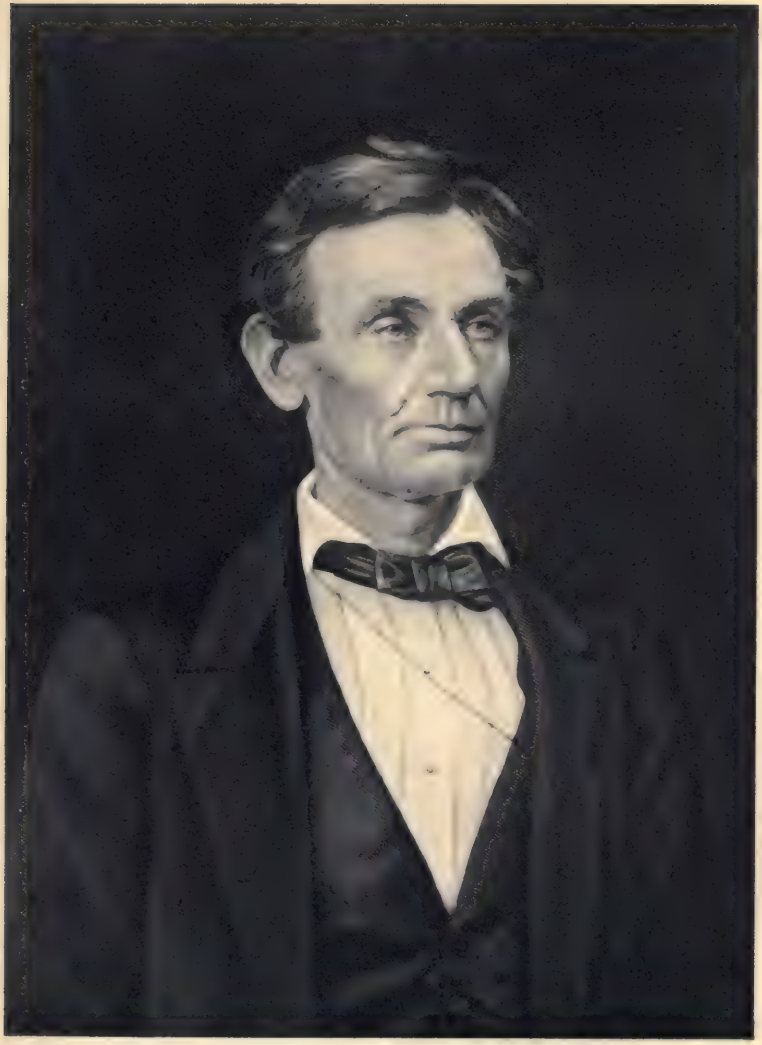
employment of other than official agencies. The effect of the bill would be to defeat the usual presumption of fraud from express violation of law, and the cases must therefore be rare which could be brought within the exception. The passage of the volunteer bounty acts of 1864, was eminently appropriate and just, in view of the peculiar circumstances under which the local authorities were compelled to act, in meeting the demands of the general government. The pressing exigencies of public war justified them in their own, as well as the public judgment, in exercising powers with which they were not vested by law for the sole reason that the occasion for conferring them had not been foreseen and provided for. They had a right to assume that their action in good faith, and in a matter of imperative public necessity would be confirmed by the authority of law. This expectation was not disappointed. But when these confirmatory acts were passed, the Legislature was not unmindful of the general financial policy of the State, and of the peril to the public interests of committing to subordinate official agencies the power of contracting debts without limitation of restraint, and they accordingly inserted in the principal act on this subject, a guarded and well considered provision conferring ample powers on the town and county authorities to borrow money and levy taxes for purposes incident to the war, but at the same time protecting the taxpayers against official improvidence and inconsiderate action, by authorizing these powers to be exercised in the case of counties, only at meetings of the Board of Supervisors, 'duly called and convened,' and by expressly prohibiting the raising of money on the credit of any town or imposing a levy on its taxable property, 'except upon a vote of a majority of the electors of such town present and voting at an annual town meeting, or at a meeting called for that purpose in accordance with the Revised Statutes.' When taxes have since been levied or money raised in accordance with these provisions there is nothing to call for legislative confirmation. But it is be-

lieved that in direct violation of these provisions, and in numerous instances, local officers have assumed to raise money and contract debts on the credit of towns and counties, paying little regard either to the rights and interests of the taxpayers, the amounts required to meet existing necessities, or the explicit requirements of the law. It is not the policy of the State to encourage laxity in the discharge of public trusts, or indifference to the limitations of official authority. It is quite probable, indeed, I am well convinced that particular cases have arisen in various localities, in which peculiar circumstances may make it appropriate and equitable to confirm the action of town and county authorities, notwithstanding its invalidity under existing laws. In some cases the Legislature has interposed to legalize irregular and unauthorized action, and doubtless hereafter this body may be properly invoked to relieve peculiar and marked cases of hardship, but the indiscriminate and sweeping confirmation of all such loans and levies throughout the State, as were not merely unauthorized but illegal, would be alike unjust to the taxpayers, and unwise as a precedent for future legislation."

DEATH OF ABRAHAM LINCOLN.

Many great events that change the course of history are often crowded into a compass of a few days. This was very strikingly illustrated in April, 1865.

On the 6th, Governor Fenton issued a proclamation announcing the fall of Richmond, and setting apart the 14th as a day of rejoicing by the people. This day was selected because by President Lincoln's proclamation it had been chosen as the day on which the national flag should be hoisted again over Fort Sumter. On the 8th, Governor Fenton issued another proclamation postponing the date of the celebration from the 14th to the 20th. The next day, the 9th, the Confederate Army under General Lee surrendered to General Grant at Appomatox. On the 14th the flag was raised again over Fort Sumter, and on the same



Abraham Lincoln

day President Lincoln was assassinated. He died on the morning of the 15th. On that day the Governor sent a message (*ante*, p. 648) to the Legislature announcing the tragic event, and also issued the following proclamation:

PROCLAMATION

BY

REUBEN E. FENTON,

Governor of the State of New York.

The fearful tragedy at Washington has converted an occasion of rejoicing over National victory into one of National mourning. It is fitting, therefore, that the 20th of April, heretofore set apart as a day of thanksgiving, should now be dedicated to services appropriate to a season of National bereavement. Bowing reverently to the Providence of God, let us assemble in our places of worship on that day to acknowledge our dependence on Him who has brought sudden darkness on the land in the very hour of its restoration to Union, Peace and Liberty.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Privy Seal of the State, at the City of Albany, this fifteenth day of April, in the year of our Lord, one thousand eight hundred and sixty-five.

R. E. FENTON.

By the Governor,
GEO. S. HASTINGS,
Private Secretary.

On the 19th of April, the day of President Lincoln's funeral in Washington, the New York Legislature adopted the following concurrent resolutions on his death:

"*Resolved*, 1st. That the Legislature of the State of New York, has received the announcement of the death of Abraham Lincoln, late President of the United States, with emotions of profound sorrow.

2d. That in the character of the illustrious dead, were united the patriot and statesman, whose purity of purpose and wisdom of counsel have guided our Republic safely in its hour of greatest trial and enshrined him in the affections of the American people.

3d. That this sad and afflicting event is a national bereavement, the more to be deplored, that his administration having well nigh suppressed the gigantic rebellion in the South, promised, as its crowning act of glory, the speedy and happy pacification of the whole country.

4th. That the unparalleled crime by which the nation has been deprived of the services of the chief of its own free choice, while in the active discharge of his duties, is not only revolting to the general sense of mankind, but is an outrage upon popular government, particularly deserving the execration of the American people, and consigning to eternal infamy its perpetrators and abettors.

5th. That we have the highest confidence in the patriotism, good sense, virtue and religion of the American people, and we believe, that even under this greatest of all calamities, they will exhibit to the world, their regard for the Constitution and Laws of their country, their love of justice and order, and their firm reliance upon an all wise and overruling Providence.

6th. That to God, who had been with this nation from the beginning, who, through the past four years of terrible war, has guided and protected us, and who of late, has so signally blessed us, do we turn in this day of our distress, and humbly commit ourselves and our interests.

7th. That while the country mourns its loss, its sympathies are due to the bereaved family of the deceased, and that His Excellency the Governor, be requested to transmit to them these resolutions, with the expression of the sincere condolence, in their great misfortune, of the people of this State.

* * * * * * * * * * * * *

9th. That the Capitol be draped in mourning, and the

members and officers of both Houses wear a uniform badge of sorrow for thirty days, and that it is recommended to all the citizens of this State to wear some symbol of mourning for a like period."

On the 20th, religious services were held in many churches, and in Albany, public offices and nearly all places of business were closed. The Legislature was not in session that day.

On the 21st, the Legislature adopted the following concurrent resolution:

"*Whereas,* it is represented that the remains of the deceased President, Abraham Lincoln, will pass through the principal cities on the line of the Central railroad, and that a brief stop will be made in this city, therefore, *Resolved,* that a committee consisting of three from the Senate and five from the Assembly, be appointed to act in concert with the Governor of the State, and the commander of this division, deputed by the War Department for that purpose, and with the municipal authorities of Albany, in perfecting arrangements for the reception of the body of the deceased President at the Capitol of this State, and meet those having the remains of the deceased in charge, at the city of New York, and accompany them through the state; and that the Lieutenant-Governor be added to that committee as the chairman thereof."

The funeral procession reached Albany in the evening of the 25th, and the President's body was at once taken to the Assembly Chamber in the old Capitol, where it lay in state until 12:30 p. m. of the 26th. At 10 o'clock on that day the Legislature and the State officers met in the State Library, and proceeded in a body to view the remains in the Assembly Chamber. In the afternoon of that day the funeral procession resumed its journey to Springfield, Illinois, the last resting place of the martyred President.

REUBEN E. FENTON, Governor.

ANNUAL MESSAGE.

To THE LEGISLATURE.— The circumstances under which we meet are very different from those of a year ago. Then the whole country was convulsed, and every energy of the people exerted to sustain the most formidable armament, and in the prosecution of the most stupendous war that history has yet known. Since then our arms have conquered a Peace as complete and honorable to our government as it has been disastrous to those who causelessly sought its overthrow.

The fundamental principle of our nationality, the doctrine of civil liberty, and inviolable federal unity, have been established in the court of last resort — an appeal to the God of Battles.

Perhaps the most wonderful events of these remarkable four years, have followed the cessation of hostilities. The federal government, confiding in the completeness of its material and moral victories, though no formal peace was declared, within eight months from its last decisive battle, disbanded one million men, who, without disturbance or commotion of any kind, have, in that brief period, been absorbed into the body of society. No less remarkable is the manner in which all our industrial pursuits have withstood the change, in so short a time, from intense warfare to profound peace. Scarcely had hostilities ceased, when every department of industry, previously taxed to its utmost capacity to provide the enginery of war, found an equally urgent demand to supply the wants of civil commerce and the peace establishments of a people who, with recuperative energy unparalleled, had, without pause, set

about repairing, restoring and reconstructing what their own hands had so lately disturbed or laid waste. Looking throughout the State, and through all the land, we see everywhere the evidence of remarkable activity and prosperity. But let us not feel too confident and self-reliant in view of these blessings. Let us rather find expression for the gratitude of our hearts in thanks to Him, who, while we sacrificed boldly and uncalculatingly in behalf of liberty and the decrees of His infinite justice, has given us not victory only, but immunity from the exhaustion and stagnation which has ever characterized the close of wars waged in the interest of selfish aggrandizement.

NEW YORK SOLDIERS.

During my administration no subject has occupied more of my attention than the condition of our soldiers. I have not hesitated to make liberal use of the sum so munificently granted by the last Legislature to provide for their relief and care. While the war was yet in progress the system of Military Agencies, which I found in existence, was extended with some modifications, until every point where our sick and wounded soldiers were congregated in any considerable number, was in charge of an efficient agent, with suitable assistants, to visit them and provide for their wants. The value and importance of these agencies have not been overestimated. They kept alive in the soldier an interest and a pride in his State by an exhibition of reciprocal concern on its part for his fortunes.

During the process of disbandment, when thousands of men were rapidly transferred from distant points to the place of rendezvous, these agencies, situated on all important thoroughfares, were kept constantly open for aid and direction. At points of mustering out they were resorted to by soldiers, and not unfrequently by officers, for assistance in recovering lost, and correcting defective papers,

and for advice in the settlement of accounts complicated by the almost infinite variety of incidents common to active service. These agents performed valuable service also in cautioning and protecting our soldiers, *in transitu,* against frauds and robberies which have, at times, been perpetrated to an alarming extent, and with great impunity, and in supplying those destitute, with clothing, subsistence and transportation to their homes. It has thus been my endeavor to maintain, in all these varying circumstances, a guardian care over the interests of these brave men.

The duties thus imposed upon these agents have been varied, onerous and difficult. They were obliged to become familiar with the details of military routine. To gain the confidence of the soldier and learn his wants, called for the kindest expressions of fellowship and sympathy, while to bring these wants to the attention of those in authority required judgment, respectful address, and patient assiduity.

The labor has been faithfully and well performed by the general superintendent and his able assistants. His report will soon be laid before you. Perhaps it may be thought that my duties as almoner of this fund should have ceased upon the return of the majority of our forces to their homes. I sincerely hope, however, that you will only regard my subsequent action as anticipatory of your own legislation in this behalf. My attention was early attracted to the number of men discharged with only partial, or without any payment of their just claims against the Federal Government. Failing to procure immediate relief from the hardships of these cases upon appeal to the Federal authorities, I felt justified, as the most economical mode of aiding the men thus thrown, indigent and disabled, upon the community, in adding to the duties of the military agencies that of collecting these claims.

The admirable working of this plan leads me to respectfully suggest the propriety of establishing, for a limited

time, a system of claim agencies, by which the State shall perform its further duty in the assertion of their just claims upon the Government, under a contract which, at imminent peril to themselves, has been of signal advantage to their country.

I desire, also, most earnestly to urge the claims of these maimed and disabled men for other and more permanent relief. Many of them must become objects of charity, not through idleness, improvidence or vice, but through the casualties of a war waged in behalf of freedom and a nation's life. The commonest sentiments of humanity, patriotism and State pride are repugnant to classing and providing for these mutilated and war-worn veterans as ordinary paupers. It should also be remembered that, though their valor and discipline as soldiers has been proved on many a sanguinary field, they have never ceased to be citizens. They went out from us in the prime of life, many of them heads of families, valuable members of communities, from regular and profitable employments in the various great fields of labor. They return to us with all their domestic, social, and, in many cases, business ties unbroken, ready and anxious to engage in their usual occupations, and only restrained by greater or less degree of physical disability. When they laid aside the uniform of the soldier, they resumed at once their separate individualities, their pride as citizens and their desire for self-sustaining employment. In providing relief for the brave and unfortunate, such sentiments, so worthy in the man and so valuable to the community, ought to be cultivated and encouraged. I doubt whether any means has yet been devised which so fully meets these requirements as our national pension system, which, graduating its relief according to the degree of the soldier's disability, still leaves him free and independent to perform, according to the measure of his remaining abilities, the domestic, social and civil duties of a good citizen. The propriety of extending this system, and relatively increasing the pension, in proportion to the

increased prices of living, as compared with the time when the present rate was established, is, I understand, receiving the attention of the authorities at Washington, and I hardly doubt, in view of its justice, that such increased provision will be speedily made. In the meantime, and at all times, much can be done by citizens, by giving encouragement to responsible employment agencies, and on the part of the State in organizing a system for the special care of partially disabled soldiers at their homes, and the establishment of an asylum for those totally disabled.

To meet the present emergencies and needs of these most worthy cases, I have resorted to various measures: the granting of individual relief; assistance to associations having this object in view; in devoting, so far as consistent with its endowment, the New York Soldiers' Depot to this purpose, and the establishment of a temporary asylum at the Ira Harris hospital in this city, leaving to you such further and permanent provision as you shall deem proper.[1]

The Soldiers' Depot in New York City, established by my predecessor, has been conducted on substantially the same plan as heretofore. There has been, however, considerable reduction of the working force, without detracting from its usefulness. The aid rendered at this institution has not been confined exclusively to soldiers belonging to this State, but those from every State have equally shared in its benefits. The military officers of the General Government, in New York City, have heartily co-operated with

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[1] Chapter 185, passed March 22, authorized the Governor to continue at Albany and Washington military agencies for the settlement and collection of claims against the United States, due residents of this State on account of services rendered in the army and navy during the late war.

The same act authorized the Governor to maintain the "temporary home" then in operation at the Ira Harris Hospital at Albany, and establish such rules and regulations connected therewith as he might deem necessary. The act carried an appropriation of $70,000 for the foregoing and other purposes.

Appropriations for the Soldiers Home at Albany were made in 1868 and 1869. The act of 1869 provided for the transfer of inmates from the Home to any national asylum to be selected by them. The transfer was to be made under the supervision of the quartermaster general.

the State authorities to make the institution equal to any establishment of the kind in the country. They have furnished the necessary subsistence, medical supplies and transportation for the sick and disabled through the city. Many benevolent citizens, the Sanitary and Christian Commissions, the Ladies Soldiers' Relief Association, and the Union League Club, have alike rendered valuable aid. The employees have, by their commendable zeal and faithfulness, established a claim to the gratitude of all who have been the recipients of its benefactions, and their earnest co-operation has been in that liberal spirit which prompted the Legislature to establish and continue its support to the institution.

The whole number admitted into the institution during the year has been eighty thousand and five hundred, who have remained on the average two and a half days. The number received into and treated in the hospital is two thousand eight hundred and seventy. Of those thirty-eight have died. The library, which was generously contributed by the Soldiers' and Sailors' Library Committee, contains twelve hundred volumes, besides large quantities of newspapers and periodicals which have been gratuitously furnished from other sources. There has been deposited for safe keeping and return to soldiers, the sum of two hundred and forty-two thousand seven hundred and twenty dollars and eighty-two cents, besides thousands of discharge and other valuable papers. The Quartermaster-General has furnished transportation to all applicants at government rates, and has collected to pay the same the sum of twenty-three thousand two hundred and fifty dollars. The amount of free transportation furnished to those entirely destitute has been about one thousand dollars. As New York is the principal rendezvous in the State for the discharge of detached soldiers, it is important that this Home be continued so long as the demands upon it are as great as at the present time. It is hoped, however, that its period of usefulness may have measurably ended, and that it may be dis-

continued by the expiration of the lease of the building, the first of May next. The details of its working, as reported to me by the superintendent, will soon be laid before you. From the amount appropriated, there has been expended on account of this Soldiers' Depot, and at the various agencies, under the general superintendent, since the first of January last, the sum of one hundred and thirty thousand dollars. The amount overdrawn, and chargeable to the year 1864, and which has been paid, is ten thousand dollars, and six thousand five hundred and twenty dollars has been paid on account of the Gettysburg Cemetery; leaving unexpended, of the two hundred thousand dollars appropriated, sixty-three thousand four hundred and eighty dollars; which balance, it is thought, will be sufficient to attain the object contemplated by the law.

MILITARY DEPARTMENTS.

By the late Adjutant General's Report of December 31, 1864, the organized force of the National Guard numbered 45,910 officers and men, comprised in —

108 Regiments,
2 Battalions,
5 Batteries,

which included the militia organization existing at the time and prior to the organization of the National Guard. But 14,131 men were reported as uniformed and equipped. The organized force, authorized in time of peace, by the law of 1862, was fixed at 30,000. In view of the fact that a much larger force was already organized, and that the arms-bearing population of the State would warrant an organization of at least 50,000, the last Legislature removed the restriction, leaving the number without limit, and appropriated $500,000 to meet outlay in this behalf. It was believed the expenditure of this appropriation would secure the complete equipment of about 30,000 men, inclusive of the 14,000 already equipped. Of the $500,000 so appropri-

ated, $236,000 only has been expended for this object, owing to the inability of the Comptroller, as stated to me, to furnish a larger sum for that purpose. In order to meet pressing demands for equipments beyond what could be purchased with the limited amount of the appropriation allowed to be expended, the Quartermaster-General was directed to issue United States clothing in his custody, which was receipted for on the part of the State. The following summary presents the number and condition of the National Guard since the last muster and inspection, viz:

112 Regiments,
3 Independent Battalions,
5 Batteries.

Aggregate force of officers and men, uniformed and equipped, 28,000. It will be seen that no great addition to the number of organizations has been made. In no case has a draft been authorized, either to create or complete an organization, nor has any special inducement been held out to encourage volunteering. On the contrary, owing to the want of equipments with which to provide the force to the extent already urgently demanded, additions to it have been, in some degree, discouraged. The increase during the past year was largely made up of veteran officers and soldiers of the late war, who, from their practical military experience, tend to improve the *morale* of the organizations with which they become connected.

I submit for your consideration the question of providing, by suitable appropriation, for a general encampment of the National Guard of the State during the coming season, for the purpose of inspection, instruction, comparison and improvement of the several organizations comprising it. It is an object of common concern to increase the spirit of emulation and pride, to foster and sustain, in all proper ways, this branch of the public interest, and do whatever we reasonably can to perfect and make adequate the military for all the emergencies which justified its crea-

tion and existence. Our northern frontier, forming a prominent part of the boundary between the United States and the British dependencies, the importance of having a sufficient force to protect and defend this extended border at all times will be readily recognized. Heretofore the policy of the General Government has been to rely upon the militia of the several States for all extraordinary exigencies. The neglect and abuses into which these State systems had everywhere fallen, not only compelled the adoption, in the emergency of the late rebellion, of a national system, but undoubtedly prolonged the war. It is a gratifying consideration that notwithstanding the difficulties with which they had thus to contend, the Federal authorities still find warrant in all our past experiences for depending upon the militia of the country, rather than upon large standing armies — ever so dangerous to free institutions. The States have now an opportunity, not only for justifying this confidence, but of encouraging a return to the original system, by properly performing the duty which must, in any event, devolve on them, of maintaining the discipline and efficiency of these State forces.[2]

The last Legislature, in passing a general bounty law, which had for its main object the equalization of bounties paid by the different localities, and the assumption by the State of these bounties, has given to the Paymaster-General's Department an amount of labor commensurate with the responsibilities thereby imposed. Owing to the delay attending the passage of the several amendments to perfect the original act, making the law finally operative, the bounty could not be paid directly to the soldiers, and it was determined to allow the counties, cities and towns to continue the same mode of payments, as prior to the law, until the close of recruiting. By this means the execution of the

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2 The militia law of 1862 was amended in several particulars by chapter 809, passed April 25. The act authorized the organization of the National Guard to consist of not more than 50,000 non-commissioned officers and privates.

law was simplified, the several localities being paid for all credits under the act, except for a few drafted men in certain districts, which were paid in person. The amount thus reimbursed by the Paymaster General, up to this date, is $25,689,243.96, and it is estimated that the claims outstanding and unsettled, amount to $500,000. These large sums of money have been paid with fidelity and promptness. No claimant has had just cause of complaint at delay or want of courteous attention, and the interests of the public treasury have been faithfully guarded.

The duties of the several staff officers have been responsible and important beyond ordinary periods of administration, and I take pleasure in commending their efficiency, ability and integrity in the discharge of the trusts confided to them. Their several reports will soon be laid before you. The report of the Bureau of Military Record will also be presented. The wisdom of the State in establishing an office where especial attention could be given to the record of all important facts bearing upon the conduct of the men who ventured their lives in a contest for the vindication of the Union, cannot be questioned. Information will be collected at this Bureau to which official and other reference can be made in the settlement of questions that attach to life and property. The materials already accumulated under the zealous and able management of the chief of this Bureau, are of the highest importance and value.[3] In consonance with the spirit of the law passed by your immediate predecessors, the authorities of the city of Albany have with great liberality offered an appropriate site, and the people in various sections of the State have made generous contributions of money for the erection of a suitable building for the records and trophies of the war. The oppor-

[3] By chapter 665, passed April 18, the Bureau of Military Record was made a staff department, under the name of "The Bureau of Military Statistics," which was to be a depository for flags, trophies, and mementoes of war. The chief of the department was to be appointed by the Governor.

tunity will thus be afforded for the sacred preservation, in the most guarded public manner, of the mementoes of the gallant deeds and patriotic devotion of the 474,000 sons of New York, who so promptly responded to the call of the National Government.

FINANCES AND TAXATION.

General Fund.

The Comptroller's report exhibits a deficiency of $1,179,394.06 in the revenue of this fund on the 30th September, 1865, an amount somewhat in excess of the deficiency last reported, as will more fully appear from the following statement:

Deficiency in the revenue, September 30, 1864	$863,814.67
Payments of the year	12,228,515.87
Total	$13,092,330.54
Receipts	11,912,936.48
Deficiency, September 30, 1865	$1,179,394.06

Other Funds.

Receipts of the year on account of all the funds except the Canal Fund		$16,273,665.76
Balance due the treasury, Sept. 30, 1864	$85,003.77	
Payments of the year	16,098,092.21	
		16,183,095.98
Balance in treasury September 30, 1865		$90,569.78

GENERAL FUND STATE DEBT.

Amount of the debt September 30, 1864.....	$6,278,954.37
Stock redeemed during the year.....	228,000.00
Amount of debt September 30, 1865...	$6,050,954.37

The amount of the direct tax levied in 1865 was 4 53-80 mills for the following purposes: For schools, ¾ of a mill; for general purposes, 2½ mills; and for canals, 1 53-80 of a mill. The State tax levied in 1864, and payable during the last fiscal year, amounted to $6,715,723.20, exclusive of ¾ of a mill school tax and county treasurers' fees.

The great expenditure of public moneys and individual capital, and an increased State and National debt in conducting the military operations of the war, have given new importance to the mode of assessments. The burdens of taxation should bear equally upon the two great classes of property, real and personal. Under our present system the valuation of personal property liable to taxation is very largely intrusted to the discretion of the assessor, with limited means of knowledge, and often determined upon information necessarily crude and inaccurate, or by personal favor or prejudice; while real property with values less shifting and unsettled, and comparatively easy of ascertainment is rated without much difficulty. The effect of this imperfect method of arriving at valuations, is to establish a virtual discrimination in favor of personal property to such an extent, that much of it escapes from a fair and equal proportion of the expense of local and State government. This is manifestly unjust, and the adoption of some plan to ascertain the true state of capital, in whatever form, I cannot doubt, will receive your early and thoughtful attention. I may be permitted, however, to suggest that the process of requiring taxpaying inhabitants, in some of the States, to make oath as to the nature,

amount and worth of their estates, has proved successful, and it would seem to furnish the remedy for the defects of our system.

BANKING AND CURRENCY.

The annual report of the Superintendent of the Banking Department shows that, on the 30th day of September, 1865, there were one hundred and nine banks conducting business under the laws of the State, with an aggregate capital of $20,436,970; that one hundred and ninety-three banks have retired from the old system, nearly all of which have been converted into national banks under the provisions of the enabling act passed at the last session of the Legislature. The total amount of outstanding circulation, including that of closed and closing banks at that date, was $27,009,449, of which sum there was issued to incorporated banks, and not secured by deposit in the Bank Department, $4,136,856, and to banking associations and individual bankers, $22,872,593, secured as follows:

Bonds and mortgages	$2,007,195.00
New York State stocks	13,868,034.10
United States stocks	9,311,350.00
Illinois State stocks	94,000.00
Cash	188,578.34
Total	$25,469,157.44

During the year the decrease in securities has been as follows:

Decrease of United States stocks	$8,528,600
do New York State stocks	2,225,706
do Illinois State stocks	233,400
do Bonds and mortgages	936,876
Total	$11,924,582

Decrease in circulation, $13,109,186, and an increase in cash of $90,215.39.

The system of a national currency, though an innovation upon the carefully devised and successful banking scheme of this State, has attracted to itself most of the banks of the country at large, and seems to have acquired the favor and confidence of the people. We discover its benefits in a uniform issue based upon the national faith, and in comparative immunity from the unsecured and unreliable paper which formerly obtained in some parts of the country, the whole system guarded by enactments that combine the wisdom and experience of the nation, to make it the most complete as well as the most reliable system of banking ever devised.

AGRICULTURE AND MANUFACTURES.

The steady progress of the State in agriculture and manufactures, affords continued encouragement to the people. The great withdrawal from the laboring forces in maintaining the military strength of the nation, seems to have found compensation at home in improvement of the implements of husbandry, and the friendly contributions of science to labor. The earth has yielded large returns to industry, supplying the wants of our armies and every deficiency of food in the Old World, and the resources of the land, in all the departments of human pursuit, have given generous response to every emergency. No less wonderful is the peaceful return of our gallant veterans to the tillage of the soil, the activity of the workshop, and the various duties of the citizen, without disturbance to the harmony of trade, or the quiet of society.

The last Legislature, in a proper spirit of liberality, accepted the munificent proposition of a prominent and philanthropic citizen of our State,* and provided facilities, for giving early effect to the scheme for a University, with ample endowment and wide range, which promises to ele-

* Ezra Cornell; see 1865, note 6, *ante*, p. 596.

vate agriculture and the mechanic arts in the scale of science and practice. The act provides that "the income, revenue and avails which shall be received from the investment of the proceeds of the sale of the lands or the scrip therefor, or of any part thereof, granted to this State by the act of Congress, shall, from time to time, as the same shall be received be paid over to the Trustees of the University." In view of the delay in locating such land scrip and the nominal value attached thereto, I suggest the propriety of conferring upon the Trustees of the Cornell University authority to purchase, at a nominal rate, with the purpose of locating the same, at an early day, for the benefit of the Institution. Such an act, framed within the purview of the law of Congress, would, doubtless, by favorable selection of land, inure to the advantage of the University, and give increased value to the liberal endowment of its founder.[4]

EDUCATION.

The Report of the Regents of the University will present, in detail, the condition of the Colleges and Academies of the State, showing a gratifying continuance of their prosperity and usefulness.

The school system of the State continues, under the administration of the able Superintendent of Public Instruction,* to increase in efficiency and importance. The report of that officer will show that there has been a gain, in the aggregate number of pupils, and in the regularity of their attendance; that there has been increased solicitude on the part of parents and school officers, for teachers of higher qualifications. It also appears that the agencies for the

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[4] By chapter 481, passed April 10, the Comptroller was authorized to fix the price of the land or land scrip received under the donation from the United States, at a rate not less than $.30 an acre, and sell the same to Cornell University. Land or land scrip not so sold to the University might be sold to other persons by the Commissioners of the Land Office. The proceeds were to be devoted to the purposes prescribed by the Cornell University act of 1865.

* Victor M. Rice.

preparation of teachers, have been in successful operation, evincing a more zealous spirit on the part of school commissioners, and an application, by teachers themselves, of the improved methods of acquiring higher culture.

The number of pupils in the Normal Department of the State Normal School is 222; in Teachers' Classes, in Academies during the past year, 1,586; in the Oswego Normal and Training School since its organization, 185, of whom 106 graduated. The number of teachers instructed in Teachers' Institutes during the past year is 8,741. It is suggested that these institutions are not adequate to the wants of schools which require more than twenty thousand teachers annually, and that their increase is demanded by considerations of economy and of duty to those whose love of knowledge and progress in virtue, are so largely dependent upon the zeal, ability and training of their instructors. I therefore suggest to you the propriety of establishing other Normal and Training schools, and of giving additional facilities and support to those already in operation.[5]

Intelligent and philanthropic citizens evince a deep interest in the promotion of regular and general attendance

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[5] Besides making the usual appropriations for the Albany Normal School and the Oswego Training School, the Legislature on the 7th of April, enacted chapter 466, which created a commission composed of the Governor, Lieutenant-Governor, Secretary of State, Comptroller, State Treasurer, Attorney General and Superintendent of Public Instruction, with authority to receive proposals for the establishment of normal schools, but not more than four could be accepted. The act provided for the organization and administration of normal schools established under it and made an annual appropriation of $12,000 to each normal school so established.

According to Governor Fenton's annual message of 1867, the commission recommended the establishment of normal schools at Fredonia, Brockport, Potsdam and Cortland, and these were established by the Legislature of that year. The commission recommended the establishment of six additional normal schools. The Legislature of 1867 authorized the establishment of a normal school at Buffalo, and also one at Geneseo.

Other normal schools were established, at Plattsburgh, 1869; New Paltz, 1885; Oneonta, 1887, and Jamaica, 1893.

Section 7 of the act of 1866 (appropriation from the common school fund) was held unconstitutional in Gordon v. Cornes (1872), 47 N. Y. 608. The same case sustained the Brockport Normal School act of 1867, chap. 96.

at our schools. The law directing the apportionment of part of the school money on the basis of average daily attendance, seems to be operating favorably, by inducing a more general attendance; but the great object of public concern is the education of all the children, and the question may well be raised, whether some additional incentive is not required to secure this result. For valuable views bearing upon this point, I refer you to the report of the Superintendent. He also recommends that free tuition in our common schools shall be furnished to the destitute children of those who have died in the military or naval service of the United States. It is presumed that such a special recognition of the patriotic services and sacrifices of the heroes who have died, could not fail to meet the approval of an intelligent and grateful people. More than ninety per cent of all the children and youth who receive scholastic instruction, go only to the common schools. In view of this fact, and of the intimate dependence of good government upon the education of the people these institutions are of paramount public importance, and provision for their liberal support and prosperity cannot be safely neglected.

PRISONS AND CRIME.

The Inspectors of the State Prisons report that, on the 30th September last, the number of convicts in the several prisons was 1,873, of whom 159 were females, and 73 insane. The earnings and expenditures for the fiscal year ending September 30, 1865, were as follows:

EARNINGS.

Sing Sing Prison for males	$94,666.33
Sing Sing Prison for females	5,236.08
Auburn Prison	77,755.55
Clinton Prison	27,561.56
Total	$205,219.52

The convicts at the latter prison have for a number of months been employed in the manufacture of iron and nails for the State, pursuant to the provisions of an act passed at the last session of the Legislature, and the value of the products of their labor remaining unsold on the 30th September, is estimated at $78,477.25, which added to the cash receipts already stated, gives an aggregate of $283,-696.77. The expenses of the same period have been as follows:

At Sing Sing male prison	$181,132.03
At Sing Sing female prison	29,949.36
At Auburn	135,426.54
At Clinton	110,833.15
Convict Insane Asylum	16,699.18
Total	$474,040.26

The large excess of expenditure over the earnings of the year compares unfavorably with the results of previous years, and is caused, in part, by the fact that during the first nine months of this period there was a large decrease in the number of inmates, while the volume of expenses could not be ratably diminished. The report of the Inspectors shows gradual improvement in the discipline and internal management of the persons under their charge, and for their efforts in this behalf I cannot speak too warmly. Perhaps, however, to accomplish the highest success, our prison system should be wholly absolved from party influence, and the changes incident to the varying fortunes of political organizations. To attain this independence, and to engraft on our Penal Code valuable improvements, appears to be the purpose of the Prison Association of this State. This association is charged by law with the function of "visiting, inspecting and examining" all the prisons of the State, and of reporting annually to the

Legislature the results of this inquiry. These duties seem to have been discharged with intelligence and fidelity, and their recommendations, based upon extended observation and research, are worthy of the attention of the Legislature. The measures of this board to furnish more thorough information, and to acquire familiarity with the working of prisons throughout the Union, will doubtless aid in the diffusion of practical knowledge and lead to salutary legislation.[6]

In view of the increase of lawlessness and disorder, and the prevalence of crime, the attention of your bodies may be properly directed to the law conferring the power of arrests, and prosecuting indictments. Under existing statutes, sheriffs are allowed limited discretion in incurring expenses in the pursuit of offenders, and in no case have they the legal right to offer the incentives of a reward, which always serve to stimulate and multiply efforts for the apprehension of criminals. I respectfully suggest that the allowance of fees to District Attorneys for successful prosecution of indictments and the suing of forfeited recognizances would tend to strengthen the arm of justice and bring offenders to more speedy trial and punishment.

ASYLUMS AND OTHER PUBLIC INSTITUTIONS.

The reports of the superintendents of the asylums for the Insane, Deaf and Dumb, the Blind, the Idiotic and the Inebriate, show that they are discharging the charitable trusts for which they were organized, in a manner alike honorable to the State and creditable to their managers. Their claims for generous support will doubtless be recognized by the same spirit of liberal and wise legislation that

[6] The Legislature adopted a concurrent resolution authorizing the prison association to appoint a commission of its own members to examine prison officers of New York or other cities for the purpose of obtaining information touching the management of our prisons and the general subject of prison discipline and government.

has heretofore enlarged their sphere of usefulness. I understand that the Commissioners, in obedience to the authority conferred by your predecessors, have located the Willard Asylum for the Insane, and the Institution for the Blind, and are perfecting arrangements for the economical management of these charities.

The report of the Superintendent of the Onondaga Salt Springs presents some new and interesting facts connected with this branch of public wealth.

The several annual statements of the Commissioners of the Fire Department and the Commissioners of Emigration of New York City, will soon be laid before you, and will exhibit many facts of general interest, as well as the reliable and prosperous condition of their respective departments. The report of the Commissioners of the Metropolitan Police is deserving of the most careful attention. It contains much information bearing upon the important questions of public health and the suppression of lawlessness and crime. Their suggestions with reference to defects in some existing laws are valuable, as the result of large experience and observation.

QUARANTINE AND PUBLIC HEALTH.

The reports of the Commissioners of Quarantine and of the Health Officer, will present the operations of our quarantine system during the past year, and indicate the legislation necessary to complete the Quarantine Establishment contemplated by the act of 1863. The epidemic of Eastern Asia, which now appears to have its stated seasons for visiting and ravaging other countries of the world, has set forth once more on its destructive journey. Following the highways of commerce, it has already swept through Arabia, Syria, the basin of the Mediterranean, and along the shores of western Europe. The observation and experience of former years warrant the apprehension that this continent will be next in the pathway of this dreaded

pestilence, and warns us that there should be no delay in making proper provision for its prevention and treatment.

On the second of November last a vessel arrived from Europe having on board a large number of passengers, several of whom were sick with the Asiatic cholera. The Commissioners found themselves wholly unprovided with any place for their reception, except upon the floating hospital which had been used during the summer for yellow fever patients. But this ship, poorly adapted to the purpose, only partially met the necessity. They were still unprovided with any place for the detention of those, who from exposure to the disease, could not safely enter the city of New York, until they had undergone the usual precautionary measures. Added to this, the Commissioners were without funds to procure the necessary supplies and accommodations, the last appropriation having been exhausted in making the improvements and disbursements authorized by the Legislature. Apprised of these facts by the Health Officer, I wrote to the Commissioners, recommending that they should assume the responsibility of incurring such liabilities as might be necessary to meet the emergency, relying upon the Legislature to ratify their action. It affords me pleasure to say, that my suggestion was promptly adopted both on the part of the Commissioners and of the Health Officer, and that they did everything in their power to provide what the occasion seemed to demand; but I regret to add that they were unable to procure any accommodations on land, either for the care of the sick or the temporary detention of those exposed to the disease. Such a condition of our Quarantine is hardly creditable to the State, and in view of the fact that medical men confidently predict that cholera is likely to prevail extensively in our country during the present year, I trust that adequate relief may be afforded. If no suitable location of that portion of the Quarantine Establishment, distinct from the floating hospital, can be procured, on land, attention

should at once be given to the erection of proper structures on the water. I commend to your careful consideration the views of the Commissioners and Health Officer, in regard to the legislation necessary for that purpose, and I deem it hardly essential to add that a sufficient appropriation should promptly be made to meet the liabilities incurred by the Commissioners in the emergency to which I have alluded.[7]

Intimately connected with the management of Quarantine, though distinct in its character, is the administration of the laws relating to public health in the cities of New York and Brooklyn, and the villages bordering on the Bay. It is very generally conceded that the existing laws upon that subject, especially those affecting the city of New York, are radically defective, and require essential modification. The sanitary control of the city is now mainly vested in two separate boards, the one being the Board of Health, composed of the Mayor and Common Council, and the other a board composed of the Mayor and Commissioners of Health. The powers of the former are almost unlimited, and it has a duration, when once convened, limited only by

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[7] The expenditures for quarantine purposes recommended by the Governor in the emergency mentioned in his message were reimbursed by chapter 365, passed April 4, which made an appropriation of $25,000 for this purpose.

The Legislature in January adopted concurrent resolutions urging the Federal government to aid in establishing quarantine facilities for the purpose of preventing the introduction of cholera, and especially requesting that such number of hulks or vessels, not then in use by the National Government, as may be needed for quarantine purposes in the port of New York until some other provision shall be made by law, be placed gratuitously and temporarily at the disposal of the commissioners of quarantine.

Immediately following these resolutions, the Legislature adopted another, urging Congress to appropriate funds equal in amount to funds which might be appropriated by the State for the purpose of erecting quarantine hospitals, and also warehouses for the storage of goods and merchandise arriving in the port of New York subject to quarantine.

Chapter 751, passed April 21, created a board composed of the quarantine commissioners and the mayors of New York and Brooklyn, with power to provide for the erection of a quarantine establishment on the west bank of lower New York Bay, but not within a mile and a half of Staten Island. The act appropriated $400,000.

the official term of its members. The powers of the latter are restricted and insufficient to remedy the evils which exist. The policy of continuing two boards, with separate and unequal authority, is at least questionable. It will be for you to determine what reformatory legislation is required. The success of the Metropolitan Police Law, and the law creating the paid Fire Department in New York City, as far as it could be tested with the limited opportunities and experience since the organization of the board under it, furnish a strong argument in favor of some similar provision for protecting the public health of the same populous territory. The subject will, I doubt not, receive from you such attention as its importance demands.[8]

Other subjects for the advantage of this great city of our State and country, will doubtless occur to you, which will be within the scope of your legitimate action. All that relates to travel and trade, to reforms in the administration of municipal government and the prosperity of its management, to the extent of your proper legislative supervision and authority, will be expected and desired by the people of the city, and receive the support and approval of the whole State.

CLAIMS AGAINST THE GENERAL GOVERNMENT.

Some progress has been made, during the past year, in the settlement of the accounts against the United States

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[8] A Metropolitan Sanitary District was created by chapter 74, passed February 26, which was co-terminous with the metropolitan police district. The act also created a metropolitan board of health to be composed of four commissioners appointed by the Governor and Senate, one of whom should be a resident of the city of Brooklyn, the health officer of New York and four of the metropolitan police commissioners. Other health boards in the sanitary district were abolished. The act contained numerous administrative provisions. The act was amended by chapter 686, passed at the same session, and was sustained in Cooper v. Schultz (1866), 32 How. Pr. 107; Coe v. Schultz (1866), 47 Barb. 64; Reynolds v. Schultz (1866), 34 How. Pr. 147; Metropolitan Board of Health v. Heister (1868), 37 N. Y. 661.

for military expenditures in 1861 and 1862, from the appropriation made by chapter 277, Laws of 1861. During the past summer the additional amount of $262,763.17 has been allowed and paid to the State. A large number of the claims, amounting to about $1,500,000 have been suspended on account of technical irregularities in the forms of vouchers, which are expected to conform to the rigid regulations adopted by the War and Treasury Departments. The entire amount was expended from the Treasury for the organization and equipment of troops for the general service, and its disbursement was faithfully supervised by the highest officers of the State. I am informed that the vouchers were rendered in accordance with the regulations of our finance officer, and there appears no equitable reason why the whole sum should not be allowed. The suspended accounts are now undergoing a re-examination by the Quartermaster-General, for the purpose of removing the objections made by the Departments at Washington.

The claim for reimbursement made in conformity with chapters 397 and 421, Laws of 1865,* amounting to about $300,000, has not been presented. It is probable that some action by Congress may be required to authorize the adjustment of these transactions. I therefore respectfully submit to you the propriety of conferring upon the Governor discretionary power to appoint Commissioners, on the part of the State, to examine and pass upon the same, with a view to final adjustment with the United States authorities. It is proper to add that the Comptroller has withheld the direct tax claim of the General Government, as an off-set to these military accounts, and when a full settlement on both sides shall take place, the balance either way will not be very great.

* So in legislative records; should be 1862.

CANALS AND INTERNAL IMPROVEMENTS.

The following is a statement of the Canal Fund for the fiscal year ending September 30, 1865:

Receipts and Payments.

Balance in the treasury and invested, October 1, 1864	$7,167,561.48
Received during the year	4,782,965.26
	$11,950,526.74
Payments	8,027,546.60
Leaving a balance in September	$3,922.980.14

Revenues for the Fiscal Year.

From tolls	$3,516,948.63
Rent of surplus waters	4,683.00
Interest on current canal revenues	24,145.76
Miscellaneous receipts	31,688.06
	$3,577,465.45

Expenses.

To Canal Commissioners for repairs	$186,412.14	
To contractors for repairs	950,033.01	
To superintendents for repairs	645,638.84	
To collectors for salaries, clerk hire, pay of inspectors and expenses of collector's office	67,416.85	

For salaries chargeable to annual revenues, refunding tolls, printing and other miscellaneous payments . . .	77,872.75	
		1,927,373.59
Surplus revenues		$1,650,091.86

which have been transferred to the Sinking Fund, under article 7, section 1, of the Constitution.

STATEMENT OF THE CANAL DEBT,

Paying Interest on the 30th September, 1865.

	Principal.	Amount net of.
Under article 7, section 1, of the Constitution. . . .	$5,163,000.00	$258,150.00
Under article 7, section 3, of the Constitution. . . .	11,667,000.00	693,350.00
Under article 7, section 10, of the Constitution.	392,585.49	21,629.28
Under article 7, section 12, of the Constitution.	2,202,000.00	132,120.00
	$19,424,585.49	$1,105,249.28

The gross receipts for the fiscal year of 1865, compared with the revenues of 1864, show a decrease of $768,800.07, and the amount paid in 1865 for the repairs and maintenance of the canals appears to exceed that of 1864, $932,-182.80. These differences, making an aggregate of $1,-700,982.87, exceed the net surplus revenues of the year by $49,891.01. The Auditor does not anticipate any material improvement in the canal receipts of the present fiscal year, as compared with those of the last, but expects some

reductions in the expenditures. The deficiency in the revenue of this year must be supplied by an addition to the taxes of $1,060,000. The balance of the canal debt on the 30th September, 1864, was $22,327,810.25. There has been paid during the year $2,903,224.76, leaving outstanding on the 30th September last $19,424,585.49. The balance of the sinking funds applicable to the payment of the principal and interest of the debt was, on the 1st of October last, $3,228,503.36. Making provision for the interest of the current year, and applying the remainder of these funds towards canceling the principal, would reduce the debt to $17,279,702.13. In addition to these payments of principal on the canal debt during the year, there has been paid from the Sinking Fund, created by section one, article seven of the Constitution, $600,000, on account of the payment to the General Fund Debt Sinking Fund, secured by section two of the same article, which had been deferred by failure in the canal revenues to make full payment to both funds. The balance of these payments can now be made to the treasury with the quarterly interest, as required by section two. If the canal revenues shall be sufficient to enable the Department to sustain an annual contribution of $1,700,000 to the credit of the fund, the entire canal debt of 1846 will be provided for and paid by the 1st of October, 1868, and no further payments on account of that debt will be required from the canal revenues. The remainder of the canal debt chargeable upon the canal tolls, after paying the principal of the General Fund Debt of 1846, will not exceed $11,500,000.

It is claimed that the improvements contemplated on the Champlain canal by the act of 1862, were not fully realized, and that the appropriation was insufficient for that purpose. This important public work has reimbursed the State for all outlay in construction and repair, and I commend the appeal for aid to your generous consideration. The needs of all these public works, including the Che-

nango, Cayuga, Seneca, Black River, Genesee Valley, Chemung, Crooked Lake, the Oneida Lake, and Oneida River improvement, as well as the Oswego and Erie, are set forth with the ability and experience which the Canal Auditor always brings to the discussion of this important subject.[9] In this connection I may mention the Hudson River improvement, near Albany. I have reason to believe that the Commissioners in charge of the work have discharged their duty with efficiency and economy. Their report, which is transmitted herewith, indicates the necessity for a further appropriation, and I commend the subject to your favorable consideration.[10]

At the Detroit Convention held in July last, composed of a large body of prominent and intelligent gentlemen from various commercial points in the northern sections of the United States and the adjacent British provinces, a resolution was adopted which I communicate herewith:

"*Whereas,* By a recent survey and estimate by the proper authorities of the State of New York, it is shown to be entirely feasible and practicable, and comparatively cheap, within two years, to enlarge the locks upon the canals, with very slight improvement in a small portion of the channel, so as to admit the passage of boats carrying from 500 to 600 tons instead of 220 tons now, thereby in-

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[9] Appropriations were made at this session for the canal debt, interest, administration, repairs, damages and other canal matters.

Chapter 33, passed February 10, provided for a survey of the Hudson river from Troy to Fort Edward, with a view to using the river for canal purposes, and also a survey of the Champlain canal from Troy to Whitehall with a view of enlarging it to the size of the Erie canal.

Chapter 794, passed April 24, provided for a resident engineer for the Chenango canal extension.

The Legislature adopted a concurrent resolution approving a reduction by the canal board of rates of toll on iron ore carried through the Champlain canal.

[10] Chapter 491, passed April 10, appropriated $150,000 for continuing the work of improving the navigation of the Hudson river initiated by the act of 1863.

creasing their capacity to at least 10,000,000 tons annually eastward, and diminishing the cost of transportation fully one-half, thus furnishing a cheap and ample outlet to an eastern market, whenever and wherever it can be found, for at least 200,000,000 bushels of grain more than was forwarded through those canals in the prolific year of 1862; therefore,

Resolved, That the Governor of the State of New York be, and he is hereby respectfully requested to recommend in his next annual message to the Legislature, that authority be granted to proceed without delay with the said improvement, and a suitable appropriation made therefor, so as to complete the work at the earliest day practicable, thereby opening a channel between the lakes and tide-water, alike ample and cheap, sufficient to meet the wants of the great grain-growing States of the Northwest for a long time to come; and, as the trade increases, enabling the State of New York to reduce the rates of tolls on her canals in a corresponding proportion."

This acknowledgment of the important position held by the State of New York, in relation to the commercial interests of the country, is valuable, and our duties to other sections, and the advantages to ourselves consequent upon this situation, deserve the careful consideration of the whole people. It is with reference more to securing for this subject their mature deliberation, than of recommending any present action on your part, that I have embodied in this message the above resolution. Section twelve, article seven of the Constitution of the State, prohibits contracting debt for the purpose of internal improvements, except upon the passage of a law which shall be submitted to the people at the next general election, and approved by them. It will postpone this question but a short time, however, if allowed to await the action of the Convention which it is now presumed will be called early in 1867, by authority of section two, article thirteen of the

Constitution, to revise the organic law of the State. Nor do I suppose that any great interest of this or other States will be seriously prejudiced by such delay.

The closing of the southern markets, and of navigation on the lower Mississippi, and the interruption of transportation over the Baltimore and Ohio railroad by the rebellion, cast upon the remaining lines the immense productions of 1862, creating complaints of insufficient facilities that year. But peace has now reopened all these avenues of trade and transportation, and it is hardly probable that our canals will be again overtasked for some years to come. No one, however, can regard the future of our country with the hopefulness which its past progress and prosperity justify, without feeling the assurance that the time is not distant when our attention will be again compelled to the subject of internal improvements in this State. It may be considered settled, that no practical general outlet to western produce exists through Canada, and transportation lines passing through States south of New York, are not likely to take any larger proportion of this freight hereafter than they have heretofore carried. The natural line of communication connecting the West and East, lies over the belt of land between the great lakes and the Hudson river, and adequate provision must be made for the movement over this inviting route, within a period of twenty years to come, at most, of twice the volume of freight carried in any past year.

To the solution of the problem involved, both State and individual enterprise should address itself. It is not probable, regarding the past history of commerce and trade, that even an enlargement of the canals will very long meet all the requirements of freight transportation. The tendency of different classes of freight to leave the canals and seek access to market on railroads, will, no doubt, continue, and it may be presumed that the demand upon them for increased facilities will grow even more

rapidly than upon the former. Indeed, it is not improbable that these circumstances may induce a reorganization of the railroad system of this State at least, and that the interests of passenger and freight business will be substantially separated. There is no question in my mind, but that a railroad constructed for the exclusive purpose of freight transit, with moderate and uniform rate of speed, would afford accommodation both for amount and cheapness, of which the present system can scarcely give an adequate conception. No less would such a separation of business add to the speed, certainty and safety of passenger carriage.

We are not called upon to refer to the principles of mere comity to determine how much we should do to meet the commercial demands which our geographical position imposes. No section can ask of us reasonable facilities, which it is not even more our interest to grant. On high and liberal principles, New York has demonstrated the wise foundation of her public works—not only as a just accommodation to vast interests beyond her own borders, but in the development of home resources, the growth of trade, the prosperity of her cities, and the enterprise of her citizens. Our attitude in the economy of States is clearly defined by conditions which we cannot ignore, and we do not desire to evade. It is not too much to say, that our destiny is that of a commercial people. I refer to their leading interest. In the east the finest harbor on the Atlantic seaboard invites to her chief city the trade and productions of the Eastern Continent. The termination of the grandest system of internal water communication in the world, constrains by irrevocable natural decree the immense and constantly increasing productions of the West, to her inland ports. New York is to-day, first in wealth, population, and importance among the States, because enlightened statesmanship developing and assisting these natural advantages, has given additional activity to all the

people, and built up within her borders one of the greatest exchange marts of the world. Our State holds this position, not mainly from her own manufacturing, mining or agricultural interests, great as these are, but because these facilities for trade, so wisely improved, enable her enterprising citizens to reap the just profits of commerce from the productions of all these interests, over an area many times greater than her own. The magnitude of this interest, thus connected so intimately with our future prosperity, requires every accommodation for its expansion.

SPECIAL LEGISLATION.

Sec. 1, Article 8, of the Constitution provides that corporations may be formed under general laws, "but shall not be created by special act, except for municipal purposes, and in cases where the objects, &c., cannot be attained under general laws." There has been a wide departure from this requirement, and in consequence our statute books are swelled with unnecessary and irreconcilable enactments. I could point to many useless if not disturbing cases of legislation that might have been avoided by adhering to the wise regulation of the framers of the Constitution. It is a favorite maxim with the advocates of popular institutions, that the "government is best which governs least." Though not strictly true, it may at least be safely asserted that for the limited period of the session, the whole attention and labor of the Legislature may be profitably employed upon matters of undoubted public interest under clear sanctions of authority.

In this connection you will not deem it obtrusive for me to refer in terms of disapproval to the practice of legislating for the relief of contractors upon the public works, which has obtained so largely and has become so vast in its demands upon the public treasury. Since the Constitution of 1846, it has been the policy of the State that the most

important work upon the canals should be performed under contracts awarded to the lowest responsible bidder,[a] and at different times, as exigencies have arisen, general laws have been passed to give effect to the same, and limiting the power of the various officers of the State in accordance therewith. This policy, which was deemed necessary and expedient, has been known to all contractors who have had any connection with the public works, and their contracts have been made with respect to it and the general provisions of law.

It is undeniable as a common principle, that all such obligations are to be observed and performed by the parties making the same, and are not, for any slight reason, to be ignored and their liabilities disregarded because the State is one of the contracting parties. The practice which has grown up of appealing to the Legislature for relief in such cases is liable to great abuse, and the liberality with which these claims have been recognized gives admonition to those whose duty it is to protect the public treasury to be careful not to yield their assent to measures of a questionable character. In my judgment, the only safe general rule is to treat contracts made with the State in the same manner as those made between individuals, and to depart from this rule only in exceptional cases, when an appeal to the equity and justice of the government requires special consideration and favor. The whole system for the performance of public work is founded upon the idea of guarding the treasury from unjust and exorbitant claims by subjecting all such contracts to open competition. It is not to be disguised, that in practice this principle has been invaded, if not entirely ignored, as is apparent by a reference to the annual records of legislation. If stipulations duly made are not to furnish the rule by which compensation is regulated, the theory

[a] Const. 1846, art. 7, § 3, am. 1854.

upon which the system was founded should be abandoned altogether.

Following the precedents of my predecessors since 1854, upon this subject, I approved several bills of this class last session. I believe they had merit, and without assuming that equal justice has been disregarded in these or other cases, I should frankly admit that my attention thus called to the custom led to further investigation and the foregoing suggestions.

CONCLUSION.

We believe that the path of peace opens pleasantly before us, and is inviting us to a long career of State and National prosperity. We may encounter difficulties as we advance, and it is the part of wisdom to be prepared to meet them. We have every reason to hope that the only causes which seriously threatened our domestic harmony and repose, have been removed.

The fundamental principle on which our Government was framed, that the will of the majority, constitutionally expressed, is the supreme law of the land, has been vindicated by armed force; and the federal compact made by our forefathers is to be henceforth and forever inviolate. The only element of weakness and danger, which claimed an abiding place in our Constitution, has been removed in the mode prescribed therein, by the consent of the Nation. We are no longer subject to the reproach, that under our institutions the title of a master to his slave is higher than that of a man to his liberty.

The stability of the Union is no longer imperiled by the antagonism of incongruous elements. The system of free labor, hitherto mainly sectional, has now become universal. The same auspicious results which followed emancipation, in every portion of the country where slavery had ceased before the rebellion, will regenerate the States now wasted by war, and open up a new era of growth and prosperity. The effect of homogeneous institutions and a general community of interests, it is believed, will be to secure a

just equipoise between the States; and a fair and equal representation in all the departments of the Federal Government.

The success of a great cause, involving vital national interests, is seldom wrought out except through suffering and sacrifice. The people of the loyal States, who were engaged in the defence of the Government, had no alternative but to submit to the inevitable calamities and burdens of war. These ultimately fell, with still more crushing weight, on the States in which the rebellion had its origin. The issue was decisive and final, and we are now once more at peace with each other, and with all the world. If the power which has been exhibited in this memorable struggle, shall fail to secure us hereafter against foreign aggression and wrong, we shall present to the public enemy a firm and unbroken front; but we trust that no occasion may arise in the future for visiting upon other nations the desolation and waste which we have mutually suffered and inflicted in these four years of civil strife.

In the work of restoring the revolted States to their appropriate Federal relations, great questions still remain for solution. While we cannot ignore the obligations, which honor and good faith impose on the Government toward all who have been faithful in its behalf, we entertain the confident hope that enlightened statesmanship will solve these difficult problems, in a spirit at once humane, magnanimous and just, and on principles which will commend themselves to the approval of all the friends of the Government, and secure the public safety. We must not be unmindful of the practical difficulties which confront us in the settlement of questions like these, nor impatient of unavoidable delay, incident to the working out of conviction and the attainment of results, when dealing with organic reforms in the structure of political institutions.

Towards our misguided countrymen we entertain no feeling of bitterness or unkindness; and animated by a quality of generous forbearance, we will cordially co-operate in

our respective spheres of influence, in supporting the general interests of all those entitled to invoke our protection. With a firm adherence to the just rights of all, in a spirit of kindness, all traces of alienation will gradually and forever disappear.

In the sunlight of returning peace we see opening before us a future of prosperity and greatness for our common country, such as has hitherto been offered to none of the nations of the earth. The war which threatened the overthrow or division of the Republic has developed its resources, consolidated its strength, and infused into the whole body of the people a spirit of renewed energy, vigor and confidence. To us and to our children it is an occasion of heartfelt joy and gratitude that the protecting hand which upholds the heavens has been our constant support. The grand and noble edifice reared by those who signed the Declaration of our National Independence has withstood the rocking of a tempest which would have overthrown the oldest monarchy; and it stands to-day as we trust it will ever stand, firm and unmoved, with civil liberty as its chief corner-stone.

REUBEN E. FENTON.

SPECIAL MESSAGES.

January 9. To the Assembly: Transmitting the annual report of the Commissioners of Metropolitan Police, and the annual report of the Metropolitan Fire Department.

January 10. To the Assembly: Transmitting the annual report of the Capital Police Commissioners.

January 16. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 16, 1866.

"Since your last session charges against certain officers of the municipality of New York have been presented to me for my action, as the Executive, under the provisions

of section twenty, chapter 446, Laws of 1857, and section one, chapter sixty-eight of the Laws of 1863.

I entered upon the discharge of the duties imposed upon me by the provisions of said acts, with the full conviction that while no public officer should be irresponsible or free from all proper checks against excess of authority, neither should the penalty of the law be enforced except upon clear and well established proof of malversation in office.

Fully impressed with these considerations and a sense of the magnitude and delicacy of the trust, I have proceeded with the investigation of such charges.

In the progress of such examination, I find that the proper determination of the question presented will require the examination of voluminous documentary testimony and a large number of witnesses, which will occupy more time than I am able, in the proper discharge of my official duties to bestow.

I have not availed myself of the authority given me by law to direct the District Attorney of the city of New York to conduct the inquiry into the truth of the charges made, as the discharge of the necessary duties devolving upon that officer must absorb his entire time and attention.

I therefore respectfully submit the subject for your consideration, to the end, if it meets with your approbation, that in the cases now before me, and in all cases arising under the provisions of the acts herein referred to, authority may be conferred upon the Executive to appoint one or more commissioners, who shall, under his direction, conduct the inquiry into the truth of the charges made, with such power to take testimony and enforce the attendance of witnesses as may be necessary; or the enactment of such amendments to the existing law as your wisdom and experience may devise.[11]

R. E. FENTON."

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[11] This recommendation was answered by chapter 629, passed April 17, which provided that on the presentation of charges against officers removable by the Governor he might appoint a commissioner to take the evidence

January 17. To the Assembly: Transmitting the annual report of the Adjutant General.

January 23. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 22, 1866.

"I herewith transmit the report of the Commissioners of Quarantine for the year ending on the thirty-first day of December last, accompanied by the report of the Health Officer for the same period. They contain statements and suggestions of vital importance to the public health, which require, and I doubt not will receive, your immediate consideration. The report of the commissioners shows a considerable expenditure of moneys in excess of the appropriation made by the Legislature last year, rendered necessary by the unexpected appearance of a fearful pestilence in the harbor of our great commercial metropolis.

In my message of the second instant, I referred to the circumstances under which these liabilities were incurred, and at the same time suggested that provision be made to guard against a similar exigency during the period of greatest danger from the dreaded visitation. I am reliably advised that indications are not wanting that cholera will very soon reappear in our country. The permanent Quarantine establishment can not be constructed in time to meet the necessities of the next spring and summer. In view of these facts, the commissioners ask that, in addition to an immediate appropriation for deficiencies, a sufficient sum be placed at their disposal to enable them to provide such temporary facilities as occasion shall require. The amount

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and report it to him. If the charges were against an officer of the county the Governor might designate the district attorney of the same county, or the attorney general to conduct the prosecution, and the trial was to be had in the county in which the accused officer resided. The act also made provision for subpoenaing witnesses by both parties. The provisions relating to this subject were afterwards included in the Public Officers Law, 1892, chapter 681, section 24.

deemed necessary for both of these purposes is $50,000, and I recommend that an early appropriation of that amount be made.

I also deem it proper to recommend some appropriate legislation to meet one of the main difficulties encountered by the health office in administering the quarantine laws, arising from the want of a suitable place for the detention of passengers who have been exposed to disease, but are not actually sick. The Secretary of War, upon my application, promptly placed the steamer Illinois at the disposal of the State, when the cholera appeared in the port of New York. Fortunately, however, the decline of the disease rendered it unnecessary for the State to avail itself of this generous offer. It is believed the General Government would grant a sufficient number of vessels for temporary use by the quarantine authorities; an arrangement, the advantage of which can hardly be over-estimated, in view of the fact that the time consumed in building hospitals, places of detention, docks, &c., would necessarily extend into the season of greatest danger. Failing in this, a proper site doubtless might be obtained for the erection of suitable buildings within the jurisdiction of the State, though it is uncertain whether the same could be purchased except at an extraordinary price, and it would seem to be a wise precaution to provide for acquiring title to such a site by right of eminent domain in case it cannot be procured by voluntary sale at a reasonable sum.

Regarding these matters of immediate importance, I have deemed it proper to submit this special communication to you, and to invite your early attention to the consideration of the subject it embraces. [See note 7.]

R. E. FENTON."

January 23. To the Assembly: Transmitting the annual report of the Paymaster General.

January 24. To the Assembly: Transmitting the annual report of the Quartermaster General.

January 25. To the Assembly: Transmitting the annual report of the Inspector General.

January 26. To the Assembly: Transmitting the annual report of the Commissary General of Ordnance.

January 27. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 27, 1866.

"I herewith respectfully transmit the report of the commissioners appointed on the part of the State of New York to confer with the agent or agents designated by the Secretary of the Treasury, in relation to the purchase and erection of suitable warehouses for storage of goods subject to quarantine within or near the port of New York. [See note 7.]

R. E. FENTON."

For report see Assembly Document No. 49.

January 30. To the Assembly: Transmitting the report of the Board of Commissioners of Pilots.

January 30. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 30, 1866.

"I herewith respectfully transmit a copy of an act of the General Assembly of the State of Vermont, entitled 'An act to prevent taking shad or white fish in Lake Champlain or its tributaries,' with a letter accompanying the same, from the Governor of that State, requesting an auxiliary enactment on the part of the Legislature of New York. I commend the subject to your careful consideration.

R. E. FENTON."

February 3. To the Legislature: Transmitting the report of the trustees of the Cooper Union for the Advancement of Science and Art.

February 3. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 3, 1866.

"I herewith respectfully transmit the memorial of T. Apoleon Cheney, LL.D., requesting authority from the Legislature to prosecute a full survey of the ancient mounds and earthworks of the State.

R. E. FENTON."

For memorial see Assembly Document No. 68. It recited previous explorations in the counties of Cattaraugus and Chautauqua, a report of which had been published by authority of the Legislature in 1860. The memorial requested permission to make similar explorations in other parts of the State.

February 13. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 13, 1866.

"I transmit herewith preamble and resolutions of the Canal Board relating to a subject of great public interest.

I have no definite information in reference to the matters of complaint beyond the statements embodied in the resolutions.

I commend the same to your early attention, with a view to such action as the interests involved would seem to demand.[12]

R. E. FENTON."

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[12] In The Robert W. Parsons (1903), 191 U. S. 17, the admiralty jurisdiction of the federal courts was held to extend to boats on the Erie canal in an action to enforce a lien for repairs. The court considered the question of maritime jurisdiction, and declared that the Erie canal was navigable water and subject to the admiralty laws of Congress.

The following are the resolutions adopted by the Canal Board on the 9th of February, 1866:

"*Whereas,* It has come to the knowledge of this Board that during the past five years disputes have arisen between boatmen employed in navigating the canals of this State and officers of the Customs' Department of the United States, by reason of the exacting of fees from canal boats when such boats were, and are especially exempted from the payment of fees by Congress, in an act passed July 20, 1846; and

Whereas, During the past season the navigation of the canals of this State was interrupted, and several boats actually seized while in the canal by Federal officers to compel the payment of fees, and to enforce on such boats the operation of the laws regulating the foreign and coasting trade; and

Whereas, By reason of such interference, and by persisting in enforcing the operation of the coasting laws, it is becoming impossible to preserve the identity of the boats built for, and navigating the canals of this State, in consequence of frequent and repeated change of name of said boats, to meet the requirements of the coasting act, thereby seriously embarrassing the State in the collection of its tolls; therefore,

Resolved, That this Board respectfully request his Excellency the Governor to communicate these facts to the honorable the Legislature, with such suggestions as to him may seem proper, with a view of securing the speedy enactment of a law by Congress exempting canal boats from the operation of the coasting laws, when not engaged in the coasting trade."

February 13. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 13, 1866.

"I herewith transmit a copy of the proceedings of the common council of the city of Albany, and documentary evidence showing that the city has complied with the conditions prescribed in section one, chapter 648 of the laws of 1865, entitled 'An act authorizing the erection of a new

capitol.' The promptitude and liberality evinced by this early compliance with such conditions, seems to demand early fulfillment of the project to which the State is committed by the enactment referred to.

This legislation was in response to necessities created by the wonderful growth of the State, the expansion of its resources, and a corresponding increase in the duties and the number of offices exercising jurisdiction over largely developed or newly established public interests.

The present building, once ample in accommodations and equal to the demands of our earlier prosperity, is now entirely inadequate to the wants of the various State departments, and deficient in the architectural improvement and progress that properly belong to the capital of the State foremost in wealth, population and extent of territory. These considerations were fully recognized by the last Legislature, and, I doubt not, will receive your ready assent.

Regarding it as important that the prosecution of this work should be undertaken without unnecessary delay, I recommend the appropriation of an amount sufficient to commence and carry forward the undertaking as rapidly as practicable, during the Legislative recess, in the manner contemplated by law.[13]

R. E. FENTON."

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[13] The act of 1865, chapter 648, approved May 1, provided for a gift from the city of Albany to the State of land on which to erect a new capitol, bounded north by Washington Avenue, east by Park Place, south by Congress Street and west by Hawk Street. The act authorized the closing of part of Congress Street east of Hawk, and of that part of Park Place south of Washington Avenue. This property was acquired by the city and conveyed to the State, and the act of 1866, chapter 583, confirmed the location of the capitol and of the site of the capitol building in Albany.

The act of 1868, chapter 830, directed the taking of additional land, comprising Hawk Street and one-half of the block of land adjoining such street on the west thereof, between Washington Avenue and State Street, and also directed the commissioners to lay out a street on the west side of the land so taken, running through from Washington Avenue to State

February 14. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 14, 1866.

"I respectfully transmit charges and specifications presented to me alleging official misconduct on the part of George W. Smith, county judge of Oneida county, with petitions accompanying the same, and I recommend that inquiry as to the truth of the charges be immediately made in accordance with the provisions of section 11, article 6 of the Constitution.

This section does not clearly define the details of procedure prior to final action upon the question of the removal of judicial officers, and there are no precedents within my knowledge to guide the action of the Senate in this instance. I have presumed, however, to refer the entire case for your consideration, without any preliminary examination on my part, with a view of forming correct conclusions as to the guilt of the party charged with malversation in office, or learning his defence; believing that this proceeding is wholly within your jurisdiction.

In my judgment, this section of the Constitution, by reasonable construction, invests the Governor with the duty of making a recommendation based upon an *ex parte* presentation of the case, and this course would seem essential to confer jurisdiction upon your body.

I do therefore recommend that the said George W. Smith, be removed from his said office, if in the judgment of the Senate, he shall, upon a full and fair investigation, be convicted of the charges made against him.[14]

R. E. FENTON."

Street of such width as they might deem proper. The additional land was paid for by the State. The act limited the expense of construction of the new capitol to $4,000.000, and the commissioners were not to proceed unless satisfied that the capitol could be constructed for that sum.

[14] The charges against Judge Smith were tried before the Senate at a special session, which was convened for this purpose on the 12th of June. The charges were not sustained.

March 3. To the Assembly: Transmitting the annual report of the Surgeon General.

March 3. To the Assembly: Transmitting the annual report of the Commissioners of Public Accounts.

March 8. To the Assembly: Transmitting the annual report of the relief furnished to sick and wounded soldiers of the state of New York, made by the Quartermaster General and Superintendent of Military Agencies for the year 1865. [See note 1.]

March 9. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act relative to contracts by the mayor, aldermen and commonalty of the City of New York,' passed April 17, 1861."

"The object of the bill is the substitution of the mayor for the recorder in a board of revision and correction of assessment lists, created by the act sought to be amended. This board consists of the comptroller, counsel to the corporation and recorder of the city of New York, and is charged with delicate and important duties. The passage of this bill was doubtless stimulated by a desire to furnish a temporary remedy for a vacancy that has recently existed in the office of recorder in the city of New York; but as this emergency has been obviated by the election of such officer on the sixth instant, the reason for a change in the organization of the board is removed. I am further reconciled to withholding my approval, by the fact that the effect of the proposed enactment would be to multiply the duties of the mayor of New York, and to impose upon him additional responsibilities, unexpected as well as unnecessary."

The bill was not passed over the veto.

March 19. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 19, 1866.

"In compliance with the resolution of your body, I herewith transmit such documents as I have been able to obtain, relating to the Antietam National Cemetery.

R. E. FENTON."

See Assembly Document No. 169.

March 28. To the Assembly: Transmitting the annual report of the Sailors' Snug Harbor.

March 29. To the Senate:

Veto of a bill entitled "An act for the relief of the towns of Amsterdam and Florida in the county of Montgomery."

"This bill provides that the Canal Appraisers shall take evidence, hear and determine the claims of the towns mentioned in the title, arising from a loss of or injury to a portion of the bridge over the Mohawk river, in the spring of 1865, and in case they are of the opinion that the State should be liable for such damages, an award shall be made therefor.

I am unable to discover in the body of this bill any reason for conferring jurisdiction upon the Canal Appraisers in a case of this character. Nor can I understand upon what principle of liability the State should assume responsibility for damages to a river bridge that has been partially or wholly swept away by a flood. Whatever there may be to justify such an extraordinary enactment, is not therein disclosed. The damage and loss of property referred to in this instance, was occasioned in all probability, by the flood that proved so disastrous in many parts of the State, in the spring of 1865, and in consequence of which large pecuniary burdens were incurred in various localities, to repair and rebuild what had thus been injured or destroyed. The

recognized rule of liability on the part of the State applies only to that class of damages arising from the prosecution of public works, or from the neglect of the agents of the government, and not to injuries resulting from the action of the elements.

It seems to me clear, that this bill would tend to disturb the settled usage of the State, and to engraft upon the present system relating to claims against the State, a doubtful and dangerous innovation. The most liberal construction in favor of individuals already prevails, and the doctrine of State obligation has been pushed to the utmost limit consistent with the manifest rights of the State.

While it is true that by this bill the question of liability is submitted to the decision of the Appraisers, subject to appeal to the Canal Board, yet experience has demonstrated that a claim having the sanction of a special enactment, thereby acquires an importance and legality which it could not otherwise possess."

The bill was not passed over the veto.

April 6. To the Senate:

Veto of a bill entitled "An act to incorporate the American Exploring and Mining Company."

"This bill empowers the company therein named to acquire by purchase, exploration, discovery, lease, location, exchange, barter, gift, grant and devise, mines of ores and minerals and mining property of every nature, and lands and tenements connected therewith, in this State, in all other states and territories in the United States, or in any foreign country, with plenary powers of working or disposing of the same, and any property real or personal pertaining to the business of the company or necessary for the purposes of the transportation of its personal property. It is further provided that it shall continue for fifty years; that its capital stock shall consist of $200,000, with

power to increase the same to an amount not exceeding $1,000,000; but that it may commence business and be deemed fully organized when $20,000 shall have been subscribed and fully paid in.

The wisdom of granting such extensive powers as are here enumerated may well be questioned. Hitherto, in this class of legislation, the rights delegated have been attended with carefully devised limitations and provisions for increasing the security of creditors. I think the authority conferred is unusual and extraordinary; opposed to the spirit of previous legislation, and in violation of sound principle. The exemption of the company from those salutary rules of liability upon its contracts that should govern in the formation of manufacturing or mining associations, is a grave objection. The banking and insurance corporations of this State have obtained a well merited reputation for safety and solvency under the stringent enactments of the Legislature. Their books are open to examination; they are required to furnish reports as to their financial condition at stated periods, and their solvency is still further fortified by the pledge of public stocks and securities. Similar wholesome restraints and precautions are applied to other corporations organizing under our general statutes. In no case are they absolved from a proper system of supervision, and scrutiny into their business affairs, or from a rigid principle of personal liability equal to the amount of capital stock. This proposed company, however, is authorized to commence business upon the payment of but a small proportion of its capital stock; and, invested with the dignity and character conferred by a special act of incorporation, may enter into transactions the scope and responsibility of which are only limited by the degree of confidence it may be able to inspire. Wisdom, as well as experience, point to the impropriety and danger of bestowing upon associations large franchises, and all the privileges of a corporate body, with

the enjoyment of comparative immunity from responsibility in the exercise of their functions.

Finally, it is believed that all the legitimate objects of a mining company can be accomplished under a general law of the State, authorizing the formation of corporations for manufacturing, mining, mechanical or chemical purposes; and I am unwilling to give my assent to special enactments when the declared objects can be attained under its well considered and approved provisions."

The bill was not passed over the veto.

April 10. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 10, 1866.

"I herewith transmit a communication from Hon. Gideon Wells, Secretary of Navy, relative to certain property adjoining the navy yard in the city of Brooklyn, with maps and written description therewith, desiring the favorable action of the Legislature of this State, ceding jurisdiction to the United States, for the purpose of a navy yard, over such property, and the riparian rights thereto.

I recommend the immediate passage of an act for such purpose.

R. E. FENTON."

April 13. To the Assembly:

Veto of a bill entitled "An act to authorize the Street Commissioners of the City of New York to make a contract for filling certain sunken lots on the southerly side of Manhattan Street, east and west of Tenth Avenue."

"Under existing laws, full authority is conferred on the common council in the city of New York, to direct by ordinance the filling in of sunken lots, when necessary for the purpose of the public health, or for the general improvement of the locality.

The effect of such filling, however, being to enhance the value of the specific lots, the law presumes the duty to be imposed upon the owner; and the power was vested in the common council on grounds of sound public policy, only in the event of his neglect, the expense incurred being a lien upon the property, under which it would after a lapse of years be sold to reimburse the treasury.

This bill departs widely from this principle, and directs that the expense of filling in the lots of the individual owners shall be assessed upon the property of their neighbors. To justify this change in existing and equitable laws regulating the subject, evidence should be furnished of some important public exigency demanding the improvement, and imposing some damage upon the owners of the lots, entitling them to be partially relieved from the burthen of the assessment.

The mere fact that, from the peculiar position of the lots the actual cost of filling in would necessarily exceed their value when filled, affords no good argument for the passage of this act. If an individual makes an injudicious investment in real estate, certainly no obligation is imposed upon the innocent holders of adjoining property to make good his losses. The precedent established, would be dangerous, unless clearly based upon some equitable considerations not disclosed in the bill.

The resolution of the common council quoted therein, affords no means of determining the number of the lots, the character of the ground or the public expediency that demanded its adoption.

The principle of this bill is subject also to another and serious objection. Under the laws now controlling numerous and costly improvements made in the city of New York, the expense of which is to be borne by the owners generally, a majority in interest have the right to arrest them; but this measure would deprive them of the remedy, and they will have no alternative but to pay the assessment,

although they may be obliged to conform the grades of their own lots to those established under this bill, and that too at their own expense.

The introduction of the name of the contractor, and the express legalization of his contract, is calculated to excite suspicion, that, at least, informality existed in the same. If the only object of this bill had been to extend the assessment under legislative authority, it could have been accomplished without conferring upon the contractor the power to enforce a contract, of the nature and scope of which, it is presumed, the Legislature must be wholly ignorant.

It is further believed, that if the work contemplated by this bill is required by sanitary consideration, that full power relative thereto resides in the Metropolitan Board of Health, within whose jurisdiction these lots are situated; and if there is just cause for alarm or complaint, the subject will, doubtless, receive their prompt attention."

The bill was not passed over the veto.

April 19. To the Senate:

Veto of a bill entitled "An act to secure the navigation of the Oneida Lake Canal, and to provide for the payment of the expense thereof."

" The bill requires the Canal Commissioners to open the navigation of the Oneida Lake canal, by rebuilding and enlarging the locks on the same, and by the enlargement of its channel or prism. If, in the opinion of the Canal Board, this reconstruction is inexpedient, then a new canal may be made, subject to certain restrictions as to length and number of locks. It further provides for raising, by general tax, the sum of $250,000, to be applied in payment of this improvement, and appropriates from the General Fund the sum of $40,000 to pay for the rebuilding of the locks in the one case, or should the old line be abandoned, the sum

of $70,000 to meet the expense of constructing new locks, making a probable aggregate of $320,000.

It is undoubtedly the policy of the State to foster and extend its system of internal improvements, which has contributed so largely to our public revenues, and to our agricultural and commercial prosperity. The success of that system has been due to the prudence and forecast which discriminated between objects of great public utility and value, and those of doubtful expediency or secondary importance. It has been the aim of our legislation to secure steady progress in the productive development of our resources, rather than augment our debt and cripple our strength, by entering upon a variety of enterprises simultaneously, without regard to their relative merit and necessity, the prospect of adequate remuneration, the claims of each to priority, or the extent of existing burdens upon the State. Mindful of this policy, and accepting it as both advantageous and wise, I was careful to call the attention of the Legislature, in my annual message, to the importance of maintaining the existing channels of commerce within the State which experience had shown to be important and valuable.

I cannot forget, however, that the liberal and enlightened policy which has prevailed in the domain of public improvement, has necessarily involved us in a State debt of considerable magnitude, and that this has been vastly augmented by the burdens imposed by the recent war. We should hesitate to increase them beyond the demands of imperative public necessity, in view not only of our existing indebtedness, but of the undue pressure of taxation upon a people, whose devotion to the national cause has led them to make voluntary contributions in a period of general peril, hitherto unparalleled in the history of human conflicts.

The power of taxation should always be exercised with extreme caution. In a period of unsettled and enhanced

valuations, and when a disposition is manifested to engage in extraordinary enterprise and expenditure, we should exercise increased vigilance in protecting the interests of the people, and shielding them from further taxation for objects, the utility of which may not be commensurate with the cost, and which can be postponed without injury or injustice.

We cannot too carefully guard the rights and property of those we represent. The revolution through which we have been passing has already produced vast changes in our financial condition and relations. I cannot doubt that a reaction will follow, and that we are gradually approaching a period of stringency, depression and embarrassment which will severely test the patience of the people, if called upon to bear burdens which might have been averted by timely prudence and forecast.

Important laws have been passed at the present session, in aid of objects which offer corresponding advantages in the development of natural wealth and the increase of the general revenue. Should not our immediate action be limited to works of this description and to those to which we are committed by previous legislation? An enterprise of the character proposed by this bill, it seems to me, should not now be undertaken unless called for by the imperative demands of commerce or in fulfillment of legislation or Constitutional pledges, and it should not be entered upon unless based on official estimates and reports, clearly showing the nature, the extent and the value of the project. In a case not clearly within the general limits I have indicated, but of admitted propriety, the State may not unwisely adopt the approved rule of individual action. A sagacious business man would, at least, defer a new or costly undertaking not imperatively required by necessity or good faith, to a more auspicious period.

A careful investigation of the history of the Oneida Lake canal, and the origin of the present bill, leads me to

believe that the prerequisite conditions have not, in this instance, been observed.

The enlargement of the Oswego and Erie canals affords a commodious and direct channel for trade, which through our great lakes seeks a cheap route to the Eastern markets. Beyond a limited and unremunerative traffic, the Oneida Lake canal has been useful mainly as a thoroughfare, connecting the Erie and Oswego canals; and the reports of the Auditor show that, when freight has been diverted from them, through this line, its receipts have been considerable. It also appears that until the imposition of toll for the passage of boats through the Oneida lake, this diversion has tended to diminish, annually, the general revenues of the canals in a corresponding degree. Upon the completion of the enlargement of the Erie and Oswego canals, the route was practically abandoned, and its tolls were reduced to an amount below the expense of their collection. If it materially shortened the distance from the port of Oswego to tide-water, there would be much to commend it to favorable consideration, but as the difference is less than one mile by the present line, as against the Oswego and Erie canals, by way of Syracuse, and over five miles further by the proposed route, and the business of the larger canals does not require the relief which this lateral route might furnish, immediate and considerable expenditure thereon would seem to be both improvident and unnecessary.

An examination of existing enactments relating to this canal discloses the fact, that the State has never undertaken to enlarge it, as the bill seems to assume. Chapter 46 of the Laws of 1860, provided that, in the contingency of rebuilding the locks of the canal, it should be the duty of the Commissioners to adjust the dimensions of the same to those of the Erie canal, while chapter 486 of the Laws of 1862, amending the former act, virtually prohibited the reconstruction of the locks. Neither law proposed the en-

largement of the canal. It is unwise, in my judgment, at this time to extend the scope of past enactments in respect to this branch of public property.

I would mention also as one objection to this bill, its experimental and uncertain character. I am unable to learn that any specific plan of improvement has been recommended by the State Engineer or other competent authority, and the indeterminate provisions of the bill supports the theory of the entire absence of a definite and well considered mode of procedure.

For the reasons enumerated, I return the bill without my approval for your further consideration."

The bill was not passed over the veto.

April 20. To the Senate:

Veto of a bill entitled "An act to amend an act entitled 'An act to revise the charter of the city of Buffalo, and enlarge its boundaries,' passed April 13, 1853, and the several acts amendatory thereof."

"The first section of the bill requires the Comptroller of the city of Buffalo to enter upon the tax rolls against the description of each parcel of land embraced in said rolls, the aggregate amount of all local assessments, with costs and interest which shall have been returned unpaid since the 1st day of January, 1856.

The second section requires that there shall be added to every unpaid tax on the first day of September, in each year, and on every fifteenth day thereafter, one per cent. until the amount so added shall be six per cent., and then it further requires that there shall be added to such aggregate on the fifteenth day of November, the further sum of six per cent., the whole amount, with the addition, to draw interest at the rate of twelve per cent. per annum. It also requires that in case the aggregate amount of such taxes and assessments remain unpaid on the fifteenth day of

November, the city receiver shall issue his warrant to a constable of the city for the collection thereof, with the further sum of five per cent. by distress and sale of the personal estate of the persons and corporations upon whose real or personal estate the aggregate of said taxes and assessments was assessed, ' or any goods and chattels in his possession whenever they shall be found within the city of Buffalo,' and it further provides that no claim of property to be made to such goods and chattels so found in the possession of any such person or corporation shall be available to prevent a sale thereof. If these doubtful and extraordinary powers were confined to the collection of the general taxes of the city, they might perhaps be defended upon the ground of public utility or necessity. All municipal corporations have the power to raise general taxes for the support of the government, in which all its citizens have a common interest. Unusual powers for enforcing the collection of these taxes can be justified only upon the assumption that they are conferred for the common good, and that isolated instances of hardship by their operation are more than counterbalanced by their general utility. Such corporations have also the power to make local improvements to a greater or less extent, which are presumed to be a particular benefit to the owners of portions only of the real estate within the limits of the corporation, and to assess the expense thereof according to the benefits adjudged to such parcels of land. Such is the case in the city of Buffalo as will be seen by reference to the charter which this bill proposes to amend. It often happens that the assessments upon particular lots, in the estimation of the owners, exceed the value of such lots, and in case they are not paid the corporation sells the land and thus divests the owner of his title. In the city of Buffalo, if no person bids in the property thus sold, the city becomes the purchaser, and I am informed that it is now the owner of a considerable quantity of real estate, the title of which it has acquired in the manner described.

By the operation of the first and second sections of this bill, it is proposed to collect together all such unpaid assessments for a period of ten years past, without reference to the fact that for nine of those years there have been sales of the lands for the satisfaction of such claims, and by an uncommon and summary process to enforce their payment by the sale of personal estate. In some cases individuals have become purchasers of city lots under sales for the non-payment of assessments, which have been returned unpaid since the first day of January, 1856, and in all other cases the city has become the purchaser under the provisions of its charter, yet by the first and second sections of this bill it is made imperative upon the Comptroller and Receiver of said city to proceed anew for the satisfaction of such assessments from personal estate. No provision is made for the determination of the conflicting rights which would necessarily arise under such an exercise of power, and perplexing uncertainty and expensive litigation would result.

The fourth section proposes to extend the lien of taxes and assessments ' heretofore or hereafter levied,' from two to five years from the time of the confirmation of the roll. It is needless to say that if any force can be given to this provision, it will seriously affect the right of parties who have become purchasers or mortgagees of lands upon the faith of the law as it existed, when their interest was acquired, and should have been definitely settled.

The fifth section contains a provision that if any portion of the various taxes and assessments, for which lands may be sold, is invalid, or not a lien upon the land, such invalidity shall not vitiate the sale. This is too wide a departure from the rule that everywhere obtains, by which a tax sale of land may be annulled, if any portion of the tax for which the same was sold is invalid. This is a most salutary rule, the disregard of which would subject citizens to great hardships and in many cases to positive injustice.

There are other features of this bill which I consider incompatible with the rights secured to the citizens of this State. Indeed, the whole amendment is altogether too loose, crude and inequitable, too regardless of the rights of the poor man, and too oppressive upon all classes to receive my sanction."

The bill was not passed over the veto.

April 20. To the Assembly:

Veto of a bill entitled "An act to facilitate the construction of the Whitehall and Plattsburgh Railroad"; and a bill entitled "An act to provide for the completion of the Albany and Susquehanna railroad."

"The first bill requires the State Treasurer, on due proof to the Comptroller, that the Whitehall and Plattsburgh Railroad Company has built ten miles of its road, or more, to pay $5,000 per mile therefor to the treasurer of the company, and at the same rate, from time to time, on the construction of the residue of the road—not exceeding ninety miles in all. To provide funds to make such payments, amounting in the aggregate to $450,000, the bill directs the imposition of a State tax of three-twentieths of a mill in each of the fiscal years commencing in 1866 and 1867.

The other bill requires the State Treasurer, upon due proof to the Comptroller of certain facts prescribed, and of the extension of the road to Sidney, in the county of Delaware, to pay to the treasurer of the company the sum of $250,000; and upon like proof of its completion to Binghamton, to pay its treasurer the further sum of $250,000. To provide funds for the payment of the $500,000 the bill directs the imposition of a State tax of three-sixteenths of a mill in each of the fiscal years commencing 1866 and 1867.

The objects of both bills are highly meritorious. Each of the roads in question will be one of the great avenues of general commerce; each traverses a region of State abound-

ing in the staples of wealth, and which has participated less than almost any other in the benefits of our public works, while it has patiently borne its share of the public burdens, and contributed its quota to the common treasury. The construction of the one will hasten the development of vast mineral resources, and materially shorten the line of transportation from the North. The completion of the other will furnish important facilities of access to the coal mines of Pennsylvania, and will greatly enhance the prosperity of a fertile and populous portion of our own State. These and other kindred considerations, doubtless, commended the measure in question to your favor.

But while the attention of the Legislature has necessarily been limited to the consideration of particular measures with reference to their general merits, I have observed, with much concern and solicitude, that the aggregate of legislative appropriations will be materially in excess of the estimates submitted by the Comptroller for the ensuing fiscal year.

The aggregate valuation of property subject to State taxation amounted last year to $1,550,879,685. The amount of State taxes imposed was $6,067,816.77. The estimate of the late Comptroller was that with usual economy in appropriations, the State tax for the ensuing year might be kept down to five mills on the dollar, which was especially desirable, as the amount of the town, county and school taxes alone for the last year was nearly forty millions of dollars. The Legislature, I doubt not, is anxious to avoid any unnecessary increase on the amount of State taxation; but the unsettled condition of things in the year succeeding the close of the war, the unusual expenditures incident to the disbandment of our armies, and the relief of infirm and disabled soldiers, the necessity of maintaining and extending the public works, the increased appropriations for the support of our State prisons and charitable institutions, and the fulfillment of obligations to which the faith of the

State had been previously plighted, have all tended to swell the aggregate amount of appropriations, until it has become quite apparent that, irrespective of the aid proposed to be given to railroad companies, the State tax for the ensuing fiscal year will amount to nearly or quite ten millions of dollars.

Before adding to this a heavy sum in aid of corporate enterprises, however meritorious, to which the public faith is not already pledged, we should consider whether it would be just to the great body of the people in a year when county as well as federal taxation will probably be higher than any future year of the present century, and when the monetary condition of the country is subject to changes between seed time and harvest, which may tax to the utmost the resources and energy of our citizens. The measures in question admit of postponement if they involve an addition to a burden which is already as great as the taxpayers should be required to bear.

The road from Plattsburgh to Whitehall is to run along the shore of Lake Champlain, which we have heretofore regarded as a great natural highway of commerce, with existing outlets by canal and railway to tide water.

The Albany and Susquehanna railroad was commenced on the eve of a great financial revolution; and, though those who projected the enterprise encountered obstacles from time to time which would have appalled ordinary ability and energy, the road is already in successful operation from Albany to Unadilla, and its value and importance has been so fully demonstrated, that I cannot but hope that even if you concur in my views, and the aid now asked from the State should not be granted, the progress of the road will not be retarded, but enlightened capitalists will be found to assist in bringing it to a speedy completion. But however this may be, I cannot believe it to be sound policy, at this juncture, to add to the State tax for the coming year a further sum for the purpose of expediting the completion of these roads. It is rarely wise to increase taxation in a

period when there is an inflated currency and a falling market. The year after the close of a great war is always one of critical peril to individual interests. We all recognize the necessity of repairing the losses incident to the recent struggle by rigid retrenchment in our public expenditures in co-operation with private economy and energy. Any undue pressure on the industrial classes, retards the restoration of general prosperity, and no pressure is so discouraging to vigorous enterprise as the dead weight of inordinate taxation. It bears with especial severity on those who compose the largest portion of the community, whose means are moderate, whose resources have been diminished either by absence in the public service or by voluntary contributions for the war, who have no surplus accumulations upon which to draw, and who are compelled, in a period of enhanced prices, to apply a large portion of their annual earnings to meet the demands of successive tax-gatherers, when the whole is barely adequate to the expense of providing for themselves and their families. Taxes, in the end, fall mainly on the productive labor of the State, and it is always a grave misfortune when those energies in industrial pursuits are compelled to anticipate future earnings, and to become borrowers in order to meet the demand of government. Any addition to the popular burden, beyond the requirements of imperious necessity, would be a source of distress to many, and of ultimate regret to all. I entertain a firm conviction that if the question could be submitted to the people of the State, whether, in view of the considerations I have submitted, these bills should become laws at this time, the response in favor of postponement would be almost unanimous.

Trusting that these views may meet the concurrence of the Legislature, I respectfully return the bills for your further considerations."

The bills were not passed over the veto.

April 20. The Legislature adjourned without day.

REUBEN E. FENTON, Governor.

ANNUAL MESSAGE, JANUARY 2.

STATE OF NEW YORK:

EXECUTIVE DEPARTMENT,
ALBANY, *January* 2, 1867.

TO THE LEGISLATURE.—I welcome the members of the two branches of the Legislature to the public councils. Questions of grave import, both State and National, await your deliberation. The auspicious circumstances which attend your meeting will cheer you in commencing the work before you; they will impart strength and unity to your counsels, and will confirm, by the authority of the public judgment, such action as you may take towards the settlement of our National difficulties, on the sure foundation of justice. The people look with undoubting confidence to you, as their representatives, to give expression to their ascertained will; and they rely on your wisdom and fidelity for such salutary and wholesome laws as shall advance our general welfare.

The year that has just closed has been charged with great events, and has been rich in its blessings of peace, and its rewards to industry. We have occasion for mutual congratulation on the progress of almost every interest of the people, and the promise of yet greater achievements in the future, to be wrought out through a firm adherence to our traditional policy, and to those fundamental truths upon which our system of government depends. We emerged from the stormy night of war, to enter upon a hardly less trying period of political conflict; and in passing through each of these ordeals, there has been developed, on the part

of the people, a steadfastness of purpose, a depth of patriotism, and an enlightened appreciation of the principles of civil liberty, which not only attest the beneficent influence and strength of our form of government, but also give assurance of its rising greatness and perpetuity.

Through the very process of our national trials, in both field and forum, the American Union has been subjected to a test more severe than any to which it can hereafter be exposed; and experience has demonstrated that its cohesion and strength depend, not on the pleasure or caprice of individual States or of geographical sections, but on the collective will of the people. That will has been declared in the forms prescribed by the Constitution. It has been maintained in war. It has been reasserted by the representatives of the People and of the State. It has prescribed its own guarantees for the future, and confirmed those guarantees by the reaffirmance at the polls of the popular will. There is no loyal man, who has not a clear and abiding confidence in the perpetuity of a government thus sustained, in peace as in war, by the sovereign power of the People. There is no foreign nation which does not recognize these as the achieved results of the conflict, and unite in respect for a people so true to the traditions of their early history, and to the liberties committed to them by the fathers; and who, having proved faithful and heroic amid carnage and battle, which filled the land with anguish; in victory seek only, yet firmly, the security of the Republic, and the supremacy of well-ordered and equal freedom.

It will be your high privilege, in the name of the people of this State, to ratify the proposed constitutional amendment, which I have the honor to transmit upon this opening day of your session. I cannot too earnestly recommend your prompt action, in order that the judgment of New York on a proposition so moderate and so just, may be submitted at the earliest day to the unreconstructed States, and that, on our part there may be no delay in anchoring

those fraternal guarantees in the Federal Constitution. I need not discuss the features of this amendment; they have undergone the ordeal of public consideration since the adjournment of Congress in July last, and they are understood, appreciated and approved. Never before in the history of the Government, upon any great question affecting our national interests, has there been such unanimity in the expression of the popular will. The proposed amendment seems to contain just the conditions of safety and justice indispensable to a permanent settlement. It spans the chasm which the rebellion opened between the loyal and the insurgent States; and if it shall be accepted in good faith, as frankly as it is tendered, the way is already opened for reconciliation and lasting peace.

There is no other plan before the people, and the verdict of the ballot box implies that no other plan is desired. The claim that the revolting States could by their own act, and without the consent of Congress, restore their former relations to the Government against which they rebelled, and that an Executive officer of the Government could exercise the prerogative of Congress, and legalize illegal governments organized by armed and unpardoned rebels — have both been rejected and condemned.

On full and deliberate consideration, the people have pronounced in favor of the authority of Congress over the whole subject of reconstruction, and have declared their purpose, that the rebel States shall not be restored to their former participation in the Government until suitable constitutional guarantees are provided for security against present disloyalty and future rebellion.

I am not insensible of the obstacles to a cheerful acceptance of the amendment, by those who retain much of the bitterness which they cherished towards us through four years of wasting war; and who are still imbued with prejudice against equality of right for those whom they recently held in bondage, and who fought to uphold the govern-

ment, while they fought to destroy it. It takes time to work out changes and organic reforms in the structure of political institutions. Progress in human affairs is of slow growth, except in periods of violent convulsions in society which form epochs in history. I need not say that the work of reconstruction is retarded by the illusory hope held out to the insurgent States, of reconstruction on terms less favorable than this amendment, to the future security and repose of the government; but this error cannot last. Moderate, yet firm in our purpose, consistent and uniform in what we propose, we tender an amendment to which we trust these States will accede, in the same spirit of frankness and good faith in which we offer it for their acceptance. If, to our disappointment and regret, they shall manifest a spirit of continued hostility, and by rejecting a proposition so liberal and just, evince a settled purpose to continue to oppress those whom we are bound in honor to protect, and at the same time to represent them in the councils of the Federal Government, it will then be the duty of Congress, by more stringent measures, to give effect to the popular will. There can be no reaction; the nation has no purpose of turning back. The powers of Congress are ample under the Constitution; and those powers will be exercised, so far as the public safety may demand, with the firmness worthy of a great people.[1]

CONSTITUTIONAL CONVENTION.

Under a wise provision of the existing Constitution,[a] the question whether there shall be a convention for revision and amendment, was submitted to the people for decision at the recent general election. The large majority by which such a convention was ordered is an emphatic expression of the public judgment, that some modification of the or-

[1] The Fourteenth Amendment was ratified by the Senate on the 3d and by the Assembly on the 10th of January, 1867.

[a] Const. 1846, art. 13, § 2.

ganic law is essential to the general welfare. The constitutional duty devolves upon the Legislature at its present session, of providing for the election of delegates, and giving effect to the popular will. It is due to those we represent, that a prompt response be made to their call for a Convention of revision, and that there should be no delay which can properly be avoided, in a matter of such general and vital interest.

It was commonly assumed by the framers of the earlier Constitutions in this and other States that their work would serve the purpose of all after time, without occasion for general revision, or even for material change. The practical result, however, was at variance with the theory. Unforeseen defects were developed by time; and provisions, framed with reference to the existing condition of affairs, became inappropriate under a change of circumstances. Revision followed revision, each being an improvement upon the past; but each proving in its turn inadequate to meet the demands of the future.

The present Constitution of this State is, in many respects, in advance of those which preceded it; but it may well be questioned whether its framers, in correcting preexisting defects, were not led into errors in an opposite direction unfavorable to efficiency in the public service.

The experience of twenty years has produced a general conviction that some of the provisions of that instrument could be modified with great advantage to the State. The intermediate period has been marked by memorable events, which have furnished new problems for solution by the framers of constitutional law. Heavy obligations have been incurred by the people, in the course of the recent war, for the maintenance of the General Government. Great changes have been wrought in the financial system of the country, materially affecting our sources of internal revenue and our system of State taxation. The depreciation of the currency, and the enhancement of prices, have

resulted through the unforeseen operation of constitutional provisions, in practically reversing the established policy of the State, which was to secure faithful and able service, by providing adequate compensation for the performance of public duties. Grave questions are likely to arise in connection with our commercial and material interests, which were not anticipated or provided for by the framers of the organic law.

It is generally conceded that there are serious imperfections in the judiciary system as it exists under the present Constitution.[b] It was new in many of its prominent features, and it is not singular that the difficulties which have since been developed by experience, were not foreseen by its authors. An ample judicial force was provided to dispose of the amount of business which then devolved upon the courts of original jurisdiction. Appeals were facilitated by the institution of independent appellate tribunals, holding concurrent sessions in the various judicial districts of the State. A court of appeals was organized to review the decisions of these, and of other appellate courts established for the convenience of the larger cities. It was to be a body consisting of eight judges, of whom four only were to be continuing members of the court, the other four being judges of the Supreme Court, who were to serve only for a single year. Six members of the court constituted a quorum, and the concurrence of five was deemed essential to a judgment, either of affirmance or reversal.

It soon became apparent that, with a court thus organized, and with an unrestricted right of appeal to the higher tribunal at the discretion of the parties in almost every civil and criminal proceeding instituted in the various courts of record, it would be impossible that decision should keep pace with litigation. The determination of

[b] Const. 1846, art. 6.

each cause involved a comparison of views by all the judges. The number was too great for consultation in open court. The sessions were occupied in hearing successive arguments, and the intervals between them in examining, and preparing written opinions in cases, the decision of which was unavoidably postponed for future conference. These, and other defects incident to the system, were felt at an early period, in the accumulation of undecided cases. The amount of legitimate business was rapidly increasing, from causes connected with our commercial growth and prosperity, and the courts were powerless to prevent the blocking of the calendars which resulted from the operation of laws they were bound to obey.

The court of last resort was rendered even more unstable than the framers of the Constitution designed, by the resignation of some of the permanent judges, who appreciated the difficulties of a system involving the discharge, without adequate compensation, of arduous and responsible duties, and with no hope of clearing the calendars. As early as 1857, the eight judges, none of whom were original members of the court, and none of whom are now upon the bench, united in a clear and able presentation to the Legislature of the faults in the organization of the courts, and recommended the adoption of amendments deemed important to its efficiency. The subject has since been considered at several sessions of the Legislature; but all measures of relief have failed, from the conviction that the only effectual remedy would be found in a convention for the revision of the Constitution.

Our present population largely exceeds that of all the original States at the time the federal constitution was framed; and from the extent of our commercial relations, and the magnitude of our diversified interests, the amount of the business devolving on our courts is much greater than that of the Supreme Court of the United States and all the subordinate federal tribunals. It is of great mo-

ment to the people, that our judicial system should be adequate to its work, and that effectual means should be taken to secure the prompt and thorough administration of justice. Every citizen is concerned in this department of the government, on which largely depends the security of our persons, our property and our rights. It is essential to the general welfare that there should be an open avenue to the courts, and an enlightened and upright bench to administer impartial justice, and to maintain the authority and stability of the laws. In another place I have referred to one or two subjects of scarcely inferior importance, and others will doubtless be considered in the convention, which will call for careful deliberation, sound judgment, and wise statesmanship.

I am inclined to think favorably of the suggestion which has been made in various quarters, that it may be advisable to secure a more numerous convention than the last by providing for the election of the usual number of delegates from the Assembly districts or counties, and thirty-two additional delegates from the State at large, each elector voting for only sixteen of that number. The practical effect of such a provision would be to give to each of the political parties the selection of half of the additional delegates at large; and it is believed that such nominations would be made by each in a spirit of common regard for the welfare and honor of the State, as to contribute to the strength of a deliberative body, charged with duties of such interest and magnitude. No objections to the proposition have occurred to me which do not seem to be outweighed by its advantages; and I therefore submit the suggestion to the judgment of the Legislature.[2]

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[2] An act providing for a constitutional convention, chapter 194, became a law on the 29th of March. The Convention was to be composed of 160 delegates, 128 of whom were to be chosen by Senate districts, four from each district, and 32 from the State at large, but no elector could vote for more than sixteen.

FINANCES.

During the past year considerable progress has been made in the work of retiring the circulation of the few remaining banks doing business under the laws of the State. The labors of the department upon which this duty devolves have been performed with fidelity.

The qualifications of voters were the same as those prescribed by the Constitution for the electors of members of Assembly,[c] but a voter was, if challenged, required to declare under oath that he had been loyal to the Union during the late rebellion. The act prescribed the form of the oath, stating various aspects of loyalty which the voter was required to establish. In Green v. Shumway (1868), 39 N. Y. 418, this part of the act was held unconstitutional, the court saying that the Legislature could not add to the qualifications fixed by the Constitution.

A district delegate was not required to be a resident of the district from which he was chosen.

The Convention was required to meet on the first Tuesday in June in the Assembly Chamber in the Capitol at Albany. The act provided that the Constitution or amendments proposed by the Convention should be submitted to the people at the next general election in November, 1867. The Convention was authorized to submit the Constitution or amendments in one proposition or in several propositions, and the vote thereon was to be taken accordingly. The Convention was also authorized to fix the time when the Constitution or amendments should take effect; in the absence of any such action by the Convention, the act provided that the Constitution or amendments should take effect from and after the 31st of December, 1867. The act contained several provisions relating to the powers of the Convention as a general parliamentary body, and as to the method of conducting its business.

The Convention met according to the requirements of the act, but did not submit any Constitution or amendments at the general election in 1867. The Convention decided to continue its labors after that time, and did not finally adjourn until February 28, 1868. This continuance of the Convention beyond the time fixed by the act of 1867, was ratified by the Legislature of 1868, chapter 538, approved May 2, with a proviso, however, that nothing in the act should be construed "to affirm or ratify any form or mode of submission to the people of the Constitution by said convention proposed."

The Constitution proposed by the Convention was submitted to the people at the November election in 1869, and except the judiciary article was rejected.

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[c] Const. 1846, art. 2, § 1.

The able report of the Comptroller, to which your attention is invited, contains the following exhibit:

GENERAL FUND.

Deficiency in the revenue, September 30, 1865	$1,179,394.06
Payments of the year	8,934,659.38
	$10,114,053.44
Receipts	7,490,415.76
Deficiency of the revenue, September 30, 1866	$2,623,637.68

There was due at the close of the fiscal year from the city of New York, $2,433,903.09, applicable to the reduction of the above deficiency of $2,623,637.68.

OTHER FUNDS.

Payments of the year on account of all the funds except the Canal Fund		$13,651,102.36
Balance in the treasury Sept. 30, 1865	$90,569.78	
Receipts of the year	12,485,574.82	
		12,576,144.60
Amount overdrawn Sept. 30, 1866		$1,074,957.76

GENERAL FUND STATE DEBT.

Amount of debt, September 30, 1865	$6,050,954.37
Stock redeemed during the year	408,332.15
Amount of debt, September 30, 1866	$5,642,622.22

The State tax levied in 1866 was 5$\frac{9}{16}$ mills, for the following purposes: For schools, ¾ of a mill; for general purposes, 1¾ mills; for canals, $\frac{15}{16}$ of a mill, and for the bounty debt, 2⅛ mills. The direct tax, levied in 1865, and payable during the last fiscal year, amounted to $6,033,817.34, exclusive of the ¾ mill tax for school purposes, and county treasurers' fees.

In my last annual message, brief allusion was made to the importance of adopting a mode of assessments that should impose upon personal property its due share of the public burdens. Efforts were subsequently made in the Senate to relieve the existing system of its prominent defects. The bill introduced for this purpose elicited intelligent and instructive discussion, and the necessity of amending the present law seemed to be generally conceded. In the course of the debate, differences arose in regard to the proper method of attaining the end in view, and the measure was lost. The vast volume of currency, the continued advance in personal wealth, and the large State and national debt, and consequent heavy taxes, must serve to increase the interest felt in this subject. The burdens of taxation should bear equally as may be upon the two great classes of property, real and personal, and I recommend a renewal of the effort to secure a modification of our imperfect and unequal plan.

It is hardly necessary to suggest to you the importance of most practical retrenchment and economy in every department of public expenditure. Our State debt is hardly short of fifty millions, and if to this is added the county, town, and municipal indebtedness, the sum is more than doubled. The period of declining prices and lessened profits has been deferred, but that it is not far remote, the experience of the past, and the indications of the present, furnish ample proof. The currency of paper and the currency of specie must gradually approximate a common level. The policy of the general government will doubtless

tend to unite and equalize the two currencies, and this involves a reduction, resulting in stringency in money and depression of business.

It is respectfully suggested that the general government could wisely diminish the impost on the productions and capital of the people, and by so doing mitigate the severity of the burdens which have resulted from the extraordinary period through which we have passed. It would not embarrass the credit of the nation, while it would assure to the State, the ability to meet all the demands upon it with promptness, and engage still further in improvement and development of resources. The theory of the general government is to impose a tax on home industry and capital, and a duty on imports, equal to the ordinary expenses of government, the interest on the national debt, and an annual sinking fund sufficient for the discharge of the whole obligation in a reasonable time. The report of the Secretary of the Treasury, December, 1865, shows that the extinction of the public debt can be effected in twenty-eight years; but the returns of the year just closed exhibit a gain in receipts over the estimates; and so far as this is drawn from the productions of the country, the increase will continue in the ratio of the gain in production. About twenty-eight millions of our present State debt was created in aid of the national cause, during the period of war, which must ultimately be raised by direct tax, unless the general government shall aid in its liquidation. It is, therefore, of the highest importance that the people should be relieved, as far as is consistent with the general welfare, from the pressure of exactions during the intermediate period. We appreciate that ours is a common interest, and wish nothing for New York, not equally advantageous to others, nor that would bear with severity or prejudice upon the national good name and credit. Heavy taxes retard enterprise and growth, and thereby diminish the ability of the people to contribute to the public demands. Guided by

this admitted truth, the general and state governments will so frame their revenue systems, as to meet all obligations by gradual and easy methods. The debt of the former does not exceed three thousand millions of dollars. It is less upon population than the debt of Great Britain, and hardly more than that of several countries of the old world, which have far less ability for payment than our own. The material wealth of our country is so vast, and the growth of our industry so rapid, as to insure our ability to meet every demand; but it is nevertheless of first importance, that it should be so distributed, through a period of years, as not to depress the enterprise of the people. Our varied industry, our profitable commerce, and our undeveloped resources, bewilder even the careful observer with their immensity and value. If the increase of population is an addition to the actual capital of a country during the period antecedent to dense settlement and matured resources, what remarkable ability our country will exhibit within the present century. Well-accredited estimates set down the entire population of the United States at about one hundred millions in the year 1900. This is upon a ratio which gives for the year 1870 about forty-two millions two hundred and fifty thousand, and for 1865, say thirty-five millions five hundred thousand; the population given by the census of 1860, being, in round numbers, thirty-one millions. Thirty-four years hence we are, therefore, to expect three times as many people in the country as there are now. The total area, including inland water surface, of the United States, is about three and a quarter millions of square miles. So, in a little more than one generation, we are to become three times as numerous, which is still far below the dense population of Europe. No cause can be assigned for ordinary periods of peace, to disappoint these enormous figures; they are deductions drawn from our wonderful and unfailing ratio of increase since 1790, and the same powerful incentives will continue to operate, so

long as our lands and products are so inviting and profitable. This increase of wealth and population involves but the same steady progress which our country has always exhibited. Can it be possible, in view of these considerations, that, from such modification, the internal revenue will fall below the requisite amount for the ordinary claims upon it, or that the national credit will suffer?

Considerable progress has been made in the adjustment of our claims against the United States for military expenditures in the early part of the late war. The amount of this claim, up to July, 1862, and inclusive of $131,188.02, paid as interest on temporary loans was $2,948,963.66. In December, 1861, the Secretary of the Treasury paid to the State the sum of $1,113,000 pending the presentation of the vouchers, and leaving a balance of $1,835,963.66, due and unpaid. In February, 1862, a special agent was sent to Washington, with the vouchers for the entire amount, and up to May, 1865, no part of it had been audited and allowed. Discouraged by the tardy progress, the late Comptroller discharged the agent, and further efforts to secure a settlement were for a time abandoned. In September, 1865, I obtained $262,763.17, which was paid into the State Treasury, and I subsequently requested a return of the disallowed accounts, in order that their informalities might, if possible, be remedied. During the past year the papers were received, accompanied by voluminous statements of differences and causes of rejection, and were placed in the hands of the Quartermaster-general, with directions to thoroughly revise them, and if practicable, satisfy the requirements of the auditing bureau of the United States Treasury. This officer, with the necessary assistants, detailed from other military departments, has made careful investigation of records and papers, conferred with officers on duty during the period of expenditure, and in every proper way prosecuted the inquiry. The labor of examination and research has been rendered

especially arduous by the lapse of time since the original expenditures, and it is gratifying that so much progress has been made in the face of so many difficulties. The accounts, so far as amended with full and comprehensive statements, have, within the last few days been presented to the United States Treasury Department, and there is reason to believe that, even under the rigid rules of the auditor, a large proportion will be allowed. It is evident, however, that several hundred thousand dollars will remain suspended, and I would again recommend such legislation as will secure a joint commission on the part of the State and general government, to which these accounts may be referred for final decision.

The expenditures from the State treasury, under the act of April 15, 1861, were made under extraordinary circumstances. The board of State officers to whom the fund was intrusted, were prompted by the sole purpose of furnishing the general government with troops efficiently organized and equipped. The authorities at Washington, absorbed in the stupendous labors precipitated upon them by the exigencies of the war, were able to render but little assistance by advice, and the early calls for volunteers were accompanied only by general directions relating to the subject of organization. No appropriation for expenses in raising volunteers was made by Congress until August 5, 1861, and the first orders of the War Department prescribing regulations in regard to such expenses, were published September 3d of that year, four months after the disbursements of the State commenced. The State Military Board had no definite guide, and were constrained to adopt such rules as suggested by the best military authority, and as appeared to them proper under the circumstances. Encouraged by the nature of the dispatches from the War Department, which conferred upon the Governor discretionary power in raising volunteers, it was presumed that these accounts would be paid without question. No method of adjustment remains, except such as may be secured by a commission,

to which may be safely confided the interests of both State and general governments, with the assurance that a final decision will accord with the demands of equity, irrespective of technical inaccuracy and formal regulations.

In this connection, I may also refer to the accounts paid by the State under chapters three hundred and ninety-seven and four hundred and twenty-one, Laws of 1862, which provide that such accounts shall be presented by the Governor to the proper officers of the United States for reimbursement. These claims amount to over three hundred thousand dollars, and as similar informalities may be urged against them, the advantage of a joint commission to settle all unadjusted claims arising out of the late war is rendered more obvious.[3]

PRISONS AND CRIME.

The Inspectors of the State Prisons report that, on the thirteenth of September last, the total number of convicts in the several prisons was two thousand seven hundred and eighty-eight, of whom one hundred and fifty-nine were females, and seventy insane. The earnings and expenditures for the fiscal year ending at that time were as follows:

EARNINGS.

Sing Sing prison for males	$125,704.32
" " " females	4,829.01
Auburn prison	97,734.91
Clinton "	193,376.56
Total	$421,644.80

[3] The Legislature adopted the Governor's suggestion, and by chapter 357, passed April 12, 1867, provided for the appointment of three commissioners by the Governor with power to "confer with like commissioners representing the United States, and to adjust and settle the claims of the State against the United States for expenses incurred in the organization, equipment, subsistence and transportation of troops in the late war."

EXPENDITURES.

At Sing Sing male prison	$220,259.36
" " female "	27,149.13
" Auburn prison	134,001.73
" Clinton "	191,640.90
" Convict insane asylum	15,937.15
Total	$588,988.27

During the year the number of convicts have increased nine hundred and fifteen, while the excess of the expenditures over the receipts is considerably less than the previous annual statement exhibits. The aggregate value of all the prison property is estimated at $2,166,969.17.

This interesting and able report of the Inspectors shows a fair condition of internal management and discipline. In my judgment, however, the entire prison system should be removed from the fluctuation of political organizations, and a permanent and more efficient policy instituted. Under existing conditions, there is a want of uniformity in administration, as the rules adopted by one board of inspectors are liable to innovation and change from their successors in office. The practice of letting convict labor to contractors, judged by the tests of experience, is subject to serious objections, while the experiment now in operation at Clinton prison furnishes ground for believing that this class of industry may be successfully utilized by the State.

I am informed that the report of the Prison Association, soon to be submitted to you, will contain much authentic and valuable information upon this branch of the public interest. The views of the distinguished gentlemen comprising the corporation are certainly entitled to great respect, and it is presumed their efforts for the perfection of our prison code will have an important influence upon future legislation.

It may be safely assumed that a system of prison management and discipline devised at the time of the adoption of our present Constitution,[d] is now capable of many reforms. In view of its revision, I am encouraged to indicate a division of executive duties connected with this branch of administration, suggested alike by experience and reflection. The Governor is now vested with the exclusive power of granting "reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment."[e] In our earlier history, executive jurisdiction over the various public interests was comparatively limited, and his duties were not essentially enlarged in the exercise of this prerogative. Each successive year, however, has augmented the labors of every department of State government; and in the rapid development of our material wealth and the growth of population, the scope of executive action has also enlarged. Crime, I regret to say, has progressed in a somewhat corresponding ratio, and the capacity of our prisons is overtaxed to receive those who have incurred its penalties. Appeals for clemency are now so numerous and importunate that this branch of official duty alone claims a large share of the time and attention of the Governor. Many of these cases are complicated by difficult questions of legal construction, the weight of evidence, or the measure of justice, constantly demanding examination and decision. It is my opinion that the pardoning power should be delegated to a co-operative bureau, or so distributed as to relieve the Governor of the sole responsibility of investigation.[4]

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[d] Const. 1846, art. 5, § 4.

[e] Const. 1846, art. 4, § 5.

[4] The Governor's suggestion was considered by the committee on pardoning power in the Constitutional Convention of 1867, but it was not adopted, the committee expressing the opinion that the provision in all our constitutions that the Governor "shall take care that the laws are faithfully executed," implies an undivided executive responsibility, and that while the labor required of the Governor in connection with pardon cases was

Allow me to direct your attention to the complaint which has reached me from many sources, of laxity in the prosecution of indictments and the enforcement of the legal penalties of disorder and crime. Under the provision of our statutes, conviction and punishment are partially controlled by the prosecuting attorney, and the results are often dependent upon his will or his caprice, while he is almost entirely absolved from that close supervision which tends to exact a strict discharge of official trusts. It is due to interests so vital to the order and welfare of society, that legislative protection against any abuses of this character that may exist, should be applied.

NEW CAPITOL.

Chapter six hundred and forty-eight of the Laws of 1865, authorized the appointment of a Board of Commissioners for the erection of a new capitol, upon compliance with certain conditions by the city of Albany. The requirement was promptly and liberally fulfilled by the city authorities, and a valuable site was conveyed to the State for the purposes contemplated. Commissioners were appointed, and plans and specifications have been procured. These plans will doubtless receive the early approval of the Commissioners of the Land Office, as provided, which will complete the work of preparation. It is proper that this enterprise, so creditable to the State, and so important to the comfort and necessities of the several branches of State administration, should be promptly and successfully prosecuted. To this end I recommend that an appropriation be made.[5]

"truly formidable," no plan to lighten the executive burden had been suggested which was deemed safe and practicable. The committee said that in states where the Governor was assisted in pardon cases by a council, the duty of the council was merely advisory, and the final responsibility rested with the Governor.

[5] See 1866, note 13, *ante*, p. 722. Chapter 485, passed April 22, appropriated $250,000 for work on the new capitol, but no part of the appropriation could be used until plans had been approved by the Capitol Commissioners

PUBLIC CHARITIES.

The various charitable institutions of the State for the care and relief of the Insane, the Idiotic, the Deaf and Dumb, and the Blind, exhibit a gratifying condition of usefulness. Their claims for generous recognition will doubtless be met by that spirit of enlightened appreciation which has hitherto enabled them to respond to the humane purposes for which they were founded.

For some years past the State has made large annual appropriations to aid in the support of Orphan Asylums, Hospitals, Homes for the Friendless and other charitable institutions. No adequate provision, however, has been made by law for the inspection of these and other corporations of a like character, holding their charters under the State, or for any effectual inquiry into their operations and management. There are a great number of these institutions, and the amount contributed for their support by public authorities and by public benevolence is large, and so many persons — the aged, the helpless, the infirm and the young — fall under their care, that I deem it expedient that the State should exercise a reasonable degree of supervision over them. To this end I recommend the appointment of a board of commissioners, in such manner as the Legislature may deem proper, to serve without compensation, but whose actual expenses should be paid, and to be invested with such powers and charged with such duties, to effect the object in view, as may be thought judicious.

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and the Governor for a new capitol which should not cost more than $4,000,000.

In the Constitutional Convention of 1867, the committee on canals and finance proposed that the "rebuilding of a new capitol shall not be undertaken within ten years from the adoption of this Constitution, nor shall any money be hereafter appropriated for that object until the expiration of that period." The committee expressed the opinion that the capitol could not be built for $4,000,000, but that it would cost at least $10,000,000. There was considerable discussion concerning the proposition to postpone the erection of the new capitol, but the subject was not included in the Constitution proposed by the convention.

I have no doubt that gentlemen of high character and conceded qualifications can be found in every part of the State, whose public spirit would induce them to serve on such a commission. Through this intelligent and reliable source, accurate information could also be obtained as to whether these charities afforded adequate assistance for the destitute children of soldiers who perished in the war for the Union. Should the present means of relief prove unequal to the needs of all this deserving class, it will be recognized as a paramount duty to make immediate and ample provision; and the board could doubtless devise a plan which, in its scope and essential features would receive general acceptance, and meet every want of the helpless and unfortunate.[6]

Unhappy differences exist in regard to the management of the Inebriate Asylum, and an investigation is asked by its board of trustees with a view to their adjustment and the early resumption of the good objects which characterized the enterprise.[7]

Under the authority conferred by chapter 587, Laws of 1865, trustees were appointed to locate the Institution of

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[6] The State Board of Charities was created at this session, by chapter 951, approved May 23. The board was given supervision of charitable and correctional institutions receiving State aid except prisons. The board was included in the Constitution of 1894, article 8, section 11, and its powers, duties and functions are in part prescribed by section 14 of that instrument, and more fully by the State charities law of 1896, chapter 546, and its amendments.

[7] A concurrent resolution was adopted by the Assembly and Senate on the 9th and 14th of February respectively, providing for the appointment of a joint committee to investigate the Inebriate Asylum. The committee was required to report at the same session. Afterwards, by an act, chapter 806, approved April 25, the trustees of the asylum were directed to transfer to the State the title to this property within sixty days after the passage of the act. Governor Fenton's message of 1868, and the report of the trustees of the New York State Inebriate Asylum presented to the Legislature of 1868, show that the transfer was made as required. The history of the agitation resulting in the legislation requiring the transfer may be found in the report of the trustees, Assembly document, 1868, No. 16.

the Blind. The citizens of Batavia, in a spirit of great liberality, furnished to the State a large and eligible site. In March last, commissioners were named to proceed with the construction of the buildings, and considerable progress has been made under their practical and efficient management. The same act provided for the purchase or lease of a building, suitable for the care and education of the blind, to be occupied until the plan was fully developed. The trustees selected for this purpose were experienced and eminent men, and in their good judgment, a structure at Binghamton was leased for three years, with the privilege of purchase. It has been fitted up with generous regard for the interests contemplated, but at greater expense than was anticipated, and now only awaits the purchase of heating and other apparatus, to complete it for occupancy. The building and grounds, the excellence and abundance of water, and the health of the locality, furnish strong arguments in favor of this also being made a permanent location. The needs of this class of unfortunate people are quite equal to the ordinary capacity of two institutions. Besides, it is quite well established that the conditions upon which success is founded, in the management of the blind, require separate institutions; one for intellectual culture and education, and the other for the prosecution of mechanical work. I understand that the owner of the Binghamton property is willing to sell to the State at a reasonable price, and I recommend the matter to your thoughtful consideration and favor.[8]

The Willard Asylum building for the Insane, at Ovid, is progressing well. The commissioners in charge, notwithstanding the difficulty in obtaining at all times, the quantity and quality of materials desired, have advanced the work with commendable dispatch and economy.

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[8] Chapter 320, passed April 10, appropriated $100,000 for the completion of the Institution for the Blind at Batavia. Chapter 744, passed April 24, defined the objects of the institution, and provided for its management.

The commissioners appointed to locate the Hudson River Asylum for the Insane have accepted a site offered by the citizens of Poughkeepsie. Hospitals for the care and cure of the insane are a present need of the State. As shown by the able report of the late Dr. Willard, there were in 1864 in the poor houses of the State, one thousand three hundred and forty-five of this unfortunate class. The ratio of incurables is steadily increasing, for the want of greater public accommodation for the early treatment of mental disease. It is the opinion of eminent medical authority, that "in a perfect state of things, where the best appliances which the science and skill of the age have provided for healing, are offered to the lunatics in as early a stage of their malady as they are to those who are attacked with fever or dysentery, probably eighty, possibly ninety per cent. would be restored." The Asylum at Utica, large as it is, is wholly inadequate to the demands of the State, besides, its distance from remote counties virtually excludes many who would otherwise receive its care. Careful computation has demonstrated that, during twenty years of its able management and successful operation, the advantages of the Asylum to Oneida county have been more than double those enjoyed by the counties next beyond, but within sixty miles, and they are nearly three-fold those of the counties which are from sixty to one hundred and twenty miles distant. These facts prove that people will avail themselves of the benefits of these institutions somewhat in the ratio of their proximity to them. The prospective Asylum at Ovid, and the one contemplated on the Hudson river, promise no more than adequate facilities for the treatment of the insane.[9]

[9] By chapter 5, passed January 22, the location of the Hudson River Asylum for the Insane near Poughkeepsie, was approved. The site selected consisted of 206 acres, and was donated by the citizens of Dutchess county.

Chapter 19, passed February 1, authorized the city of Poughkeepsie to borrow $50,000 to pay three-fifths of the expense incurred by that city and Dutchess county in procuring the site for the hospital.

Chapter 33, passed February 14, authorized Dutchess county to borrow $34,000 to pay the other two-fifths of the cost of the hospital site.

It will be recognized as a duty to contribute to the fund for a National Cemetery at Antietam, to preserve from desecration the remains of our gallant heroes who fell upon that historic battlefield. The State of Maryland has made large appropriations for this object, and through its board of commissioners, has endeavored to secure the co-operation of other States. The amount originally assigned to New York State was $17,281.88. Most of the Northern States have already made appropriations for this purpose. As the general government has initiated liberal provision in this behalf, it is now supposed that the sum of ten thousand dollars will discharge the obligation resting upon our own State. With a view of manifesting a proper interest in this national project, I appointed two eminent gentlemen to represent this State upon the occasion of dedicating the grounds selected for the cemetery, and their report will be duly transmitted for your information.[17]

NEW YORK CITY. QUARANTINE AND PUBLIC HEALTH.

I invite your attention to the affairs of the city of New York: the most populous as well as the first commercial city of the western continent; intimately connected with the vital interests of all parts of the State; holding relations with every State in the Union, and every country abroad. This imperial city lies within our borders, and is justly entitled to every consideration demanded by such vast and important interests and relations. To adorn and improve it, to extend its commercial convenience and capacity, to give greater security to life and property, to protect those doing business within its limits from exorbitant and un-

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Chapter 93, passed March 16, provided for the establishment and organization of the asylum.

The supply bill, chapter 481, approved April 22, contained an item of $5,000 for the purchase of additional land for the asylum.

[17] The supply bill, chapter 481, appropriated $10,000 as a contribution to the fund for a National Cemetery at Antietam.

necessary taxation, are matters of first importance to the city, and to all parts of the State. The method by which these results may be attained, I leave to your intelligent judgment, confident that you will agree with me, that whatever appropriate legislation can effect towards these desirable ends, is clearly required at your hands.

In my last annual message I called the attention of the Legislature to the fact that the fearful epidemic which had raged with such violence in many parts of Europe, had already made its appearance in our principal seaport, and I recommended that prompt measures should be provided by law to stay its progress. This recommendation met with a ready and liberal response. Concurrent resolutions were passed by the Legislature calling upon Congress to aid the State by placing hulks and vessels, temporarily, at the disposal of the quarantine authorities. An appropriation was also made, to enable the Quarantine Commissioners to provide such means for the care and treatment of the sick as the exigencies of the case should require. They took immediate steps to bring the action of the Legislature to the attention of Congress, and secured the passage of a resolution by that body, authorizing the Secretaries of War and Navy to comply with the request of the State.

Impressed with the national importance of guarding against the consequences of the introduction of the terrible scourge into the great commercial metropolis of the country, the Secretary of War at once placed the steamship "Illinois," and the Secretary of the Navy placed the sloops of war, "Saratoga" and "Portsmouth," under the control of the State. In this connection I have the pleasure to acknowledge, also the generous action of the Secretary of the Treasury, in placing the United States revenue cutter at the port of New York in charge of a special agent, to aid our authorities in enforcing quarantine regulations. Events have since shown that these steps were neither unnecessary nor premature. Scarcely had these preparations

been made before the steamship "Virginia" arrived from Liverpool, having lost forty-six of her passengers by cholera during the voyage, and having a large number of sick on board. The number of her sick increased while under quarantine, until it reached one hundred and ninety-six. Since that time eighteen other vessels have arrived from foreign ports, each of which brought the frightful malady to our shores. Six hundred and fifty-one persons sick with the disease have been treated under quarantine since these facilities were provided. The number of cases that have occurred on board of vessels during their passage, and after their arrival here, is not definitely known, but it is estimated by the Health Officer at two thousand, and that out of this number at least one thousand have died. It is believed that few, if any, cases of cholera have appeared on shore, the origin of which can be traced to the sick under quarantine. This is the highest testimony in favor of the vigilance of the Health Officer, and the efficiency of the measures adopted by the Commissioners of Quarantine, to confine the disease to the vessels in the lower bay. It would seem, also, to set at rest the doubts expressed as to whether a personal quarantine, in cases of cholera, is of any practical value.

In view of these facts, it will become your duty to determine what further action should be taken to continue the protection and security we have enjoyed during the past year. Experience, both here and abroad, teaches that the frosts of winter present no effectual barrier to the approach of this dreaded malady. Its visitation among us in 1865 was as late as the third day of November, while eight out of the eighteen vessels above mentioned arrived after the first of November 1866. The presence of cold weather, therefore, brings with it no guarantee of safety. Many predict that the most serious visitation of the disease is yet to come, and that the approaching season will require more ample accommodations for the sick than have yet been provided. The joint resolution of Congress, to

which I have referred, is limited in its operations to one year. The quarantine hospital now being erected on West Bank cannot probably be completed and ready for the reception of patients before the middle of the coming summer. In the meantime other accommodations should be provided. The people rely upon your wisdom and liberality to supply their officers with whatever may be necessary to protect the public health. The reports of the Commissioners of Quarantine and the Health Officer furnish information and suggestions, founded on experience, which will aid in guiding your judgment.[10]

An act was passed by the last Legislature, creating a Metropolitan Sanitary District and a Board of Health therein, and on the sixth day of March the organization provided for was made. The efforts of the commissioners appointed, to improve the sanitary condition of the district —which was then deplorable— aided by the fear of an impending pestilence, soon accomplished the most gratifying results. The measures of the board have secured to

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[10] The supply bill, chapter 481, appropriated $50,000 to be used by the quarantine commissioners in maintaining the quarantine establishment at New York, and in taking effective measures for the arrest and treatment of infectious diseases; $50,000 for the construction of a foundation and wall on the west bank, upon which to erect a suitable structure for the reception and temporary detention of passengers under quarantine who have been exposed to contagious or infectious diseases; $25,000 for quarantine buildings on Coney Island, and $25,000 for the purchase of a steamboat for general quarantine purposes.

Chapter 543, approved April 22, authorized the commissioners of quarantine, the metropolitan board of health and the mayors of New York and Brooklyn, to provide for a temporary quarantine establishment on Barren Island, pending the erection of permanent buildings on the west bank. They were also directed to select a suitable site for a landing and boarding station on the west end of Coney Island. Both sites were to be approved by the Governor, Lieutenant-Governor and Comptroller, or a majority of them.

The Legislature at this session adopted a concurrent resolution requesting the federal authorities to permit the continuance of the use by the State of the vessels assigned for quarantine purposes in response to a resolution adopted by the Legislature in 1866, and to provide other facilities to aid in preventing the introduction or spread of cholera during the coming season.

New York and Brooklyn, as well as to other portions of the State, a comparative exemption from the great afflictions usually attending the presence of this epidemic. The public confidence in the ability of the commissioners, quieted the fears of the people, and the great commercial interests of the State have not materially suffered. With their ability, activity and energy, and with the support and confidence of the public, it is believed they will, in time, reduce the mortality of the great cities in the Metropolitan district, aid in preserving the health and promoting the comfort of the people, and by these means add to the wealth, and increase the prosperity of the State. The act creating the Metropolitan Board of Health requires some slight amendments, to secure its greater efficiency, for which your attention is directed to their report and accompanying documents.[11]

The several annual statements of the administration of the Police Department, the Fire Department, and the Commissioners of Emigration, will soon be laid before you. These reports are replete with information of public interest, and disclose the successful operations of their respective departments.

MILITARY DEPARTMENTS.

There were, on the first day of December, 1866:

104 regiments of infantry; 3 regiments of cavalry; 1 regiment of artillery; 1 battalion of infantry; 2 battalions of artillery; 3 batteries of artillery; 1 battalion of cavalry; 1 independent battery; 2 light howitzer batteries; 1 squadron of cavalry.

Of infantry regiments thirteen will be disbanded and consolidated.

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[11] Chapter 956, approved May 25, contained numerous provisions relative to the powers, duties and functions of the Metropolitan Board of Health. Section 7, relative to actions, was sustained in Burnham v. Acton (1868), 35 How. Pr. 48.

There has been a marked improvement in the National Guard organization of the State during the past year in discipline and efficiency. The regiments to be disbanded and consolidated have failed mainly by reason of lack of uniforms and equipments. The appropriations granted heretofore, for the purchase of uniforms, arms and equipments, have been expended, and still several thousand men, enrolled and organized, are unsupplied. The appropriation of one hundred and fifty thousand dollars, made last session, payable out of fines and taxes to be collected from the reserve militia force, has not been realized.

On the first of January, 1866, the enrolled and organized force of the National Guard was slightly in excess of fifty thousand men. The last Legislature fixed upon this number as the maximum to be maintained in time of peace, and also provided that the minimum of thirty-two men, rank and file, for the company organization, should be increased to sixty-four men. It is the opinion of the Adjutant General that the former number is all that should be required in time of peace, conferring upon organizations discretionary power of increase. The militia law of the State, and the act of Congress relating to a militia system, provide that each regimental district shall have an organization, and, with one hundred and twenty-eight districts, an increased minimum will necessarily augment the force beyond the number fixed by the Legislature.

Your attention is respectfully directed to the improvements for the alteration of the Springfield and Enfield rifles, and to the action of this and other governments in adopting breech-loading small arms, with the view of securing to the National Guard of our State the advantages of this improvement. With the largest and best organized militia of any of the States, it should be our aim to raise it to the highest standard of efficiency. I have deemed the matter of sufficient practical importance to warrant the

appointment of a military commission, and their report will be duly transmitted for your further information.

The unorganized arms-bearing population constitute the reserved militia. Three enrollments have been made, or attempted, since the militia law was passed, and in neither case has it escaped legal criticisms upon the mode of its execution. Under the enrollments of 1862 and 1864, no fines or taxes were realized to the treasury. The Legislature intervened in one instance, and relieved this reserve delinquent force from its payment; in another, legal objections were raised which deterred the authorities from any attempt to enforce it. In making the third enrollment during the past year, more care has been bestowed in conforming strictly to the requirements of the law, and it is expected that the militia fund will be benefited thereby.

The importance of an effective militia to a democratic republic cannot be over-estimated. A people who really desire to avoid war will find a potent element of security and peace in a well organized militia. It may at least be questioned whether any government, however wise its foundation, can safely dispense with a well regulated citizen soldiery, which may be called to the public defense in periods of public danger. Our experience as a people seems to justify this opinion. Gratitude will be eternal to the men who sprang to arms at the call of the government in 1861, and however much we may owe to their ardent patriotism, we cannot but feel that the feeble character of the military organizations in the Northern States emboldened the rebels with the hope of success, and even made probable, in their judgment, the success of the rebellion itself. If our populous loyal commonwealths had been more fully prepared with well disciplined and well armed citizen soldiers, the suppression of the rebellion might have been a work of months rather than of years.

With an enlightened people a complete military system enlists upon the side of law and order a large number of

able-bodied members of community, and creates a force of sufficient strength to discourage outbreaks against the peace and quiet of society. It seems, also, to keep alive the grand traditions of the race; the chastened memories of the nation's trials and triumphs; it excites more exalted feelings of personal responsibility to the government, and inspires a chivalrous sense of national honor, which a people should ever feel who are willing to face death in defense of their rights. If not impracticable, it would still be unwise, to organize the whole arms-bearing population. On the other hand, we could not create a class militia, without making distinctions opposed to the genius of our institutions. It is a source of pride to turn to our National Guard organizations and militia system as the best solution of the question yet found in the experience of any of the States.

The reports of the several Staff Officers will soon be laid before you. The duties which pertain to those departments of the public service have been faithfully and well performed. The late rebellion necessarily increased largely the military expenses, and since its suppression no considerable reduction in these departments could be made. The perfection of the records, the issue of certificates confirming the claims of officers and privates for back pay, bounty and pensions, the continued application for State bounty, and the revision of the accounts of the State against the United States, have, together with other important duties, required a continuing large force and expenditure. But during the past year such progress has been made in the adjustment of these matters, that I shall be able to make some diminution, and still maintain the efficiency of these departments for the discharge of all important duties.

The report of the Bureau of Military Statistics will also be presented. The objects of this office are highly patriotic, and its value as a means of collecting and preserving the material for accurate history, is obvious. Through its correspondence with town and county authorities, officers

of societies, and members of military bodies, the details and statistics of effort and organization throughout our State have been gathered, and now constitute a vast fund of information of public interest and utility. The report of the Chief of this bureau makes full mention of many facts and matters of importance and pride to the people.

It is not certain that the project to secure a hall of military record will be consummated. The scheme for such a building, to perpetuate the memory of the part taken by New York soldiers, sailors and citizens, in the late civil war was based upon an appeal to patriotic sympathy and gratitude. Thus far the sum contributed has been less than one-fourth of the amount required for the purpose contemplated in the act of the Legislature. The failure of the plan will not be a matter of deep concern, if the new capitol building shall be prosecuted with reasonable vigor, of which there is now little doubt. In this building a room may be set apart for the collection of relics and mementoes, which are already very numerous and of rare interest, and which will, doubtless, augment for years to come. While it is hoped that the money will be contributed adequate to the original design, I cannot doubt, as the bureau must eventually become substantially a branch of the Adjutant General's department, that an appropriate repository for the collections may be arranged in the new capitol near the military archives which pertain to his office.[12]

MILITARY AGENCIES.

The subject of State aid to disabled soldiers, and to the widows and orphans of those who fell in battle during our recent war, will again engage your attention.

The military agencies at Washington and Albany, and the temporary Soldiers' Home, through which the aid of the State has been disbursed, have secured great good to

[12] The Military Code was amended in several particulars by chapter 502, approved April 22.

those who have needed their assistance, and proved an efficient and economical means for the distribution of State aid.

The amount of business transacted at the agencies has been large. Over seventeen thousand claims have been prepared and forwarded; thirty thousand letters have been written, and six hundred thousand dollars collected. There are now fifteen thousand applications pending, on which not less than one million five hundred thousand dollars will be obtained during the coming year.

Nearly all of those making applications are in extremely destitute circumstances; their necessities urging them to avail themselves of the benefit of a free claim agency. Many of the claims, when presented, are, from incomplete evidence and other imperfections, of so doubtful a character and present so many difficulties, that no attorney would undertake their prosecution without being guaranteed their fees; a condition with which, from their indigent circumstances, the applicants could not comply. The claim would thus, virtually, have to be abandoned, and the most necessitous cases would be excluded from the benefit of provisions made in their behalf by the government; and thousands of dollars would be lost to the State. A further consideration, of great importance to the recipients of these bounties, is the expedition of the process of settlement of the claims filed by these agencies. They are uniform, prepared with great care, conform strictly to the regulations prescribed by the different departments of the general government, and are in such numbers as to permit of their presentation by regiments, at the proper department.

It must also be considered that, should these agencies be discontinued, and claims transferred to attorneys, the expense to the claimants would doubtless be equal to the fees which have been charged in original cases, and that delay and complication would be unavoidable. I assume your hearty concurrence with me, that good faith towards those

who have been invited to present their claims through these channels, clearly demands the consummation of them.

The enactment by Congress towards the close of its late session of the equalization bounty bill, greatly increased the duties of these departments, and required the employment of a larger force than was at first expected, and it is probable that no reduction of employees can safely be anticipated during the current year.

The temporary Home for such disabled and necessitous soldiers of this State as required its shelter and protection, has been in operation during the entire year, and has met the demands upon it, both as a home and as a hospital. The industrial school building and its ample grounds, which the city of Albany so generously placed at the disposal of the State for this purpose, seem well calculated, by reason of location, size and arrangement, for the present object, and have fittingly expressed the care of the State for its maimed and sick defenders. Since the organization of the Home, it has afforded shelter for over six hundred men, who have come from thirty-seven counties of the State. Of this number more than one-half have been under treatment, in the hospital of the Home, for re-opened wounds, or sickness resulting from service during the war. Three hundred and sixty-five men have been discharged at their own request, recovery from sickness, reception of back pay or pensions, or suitable employment, relieving them from the necessity of further aid from the Home. There are at present two hundred and fifty inmates, ninety-seven of whom have suffered amputation, sixty-one have been otherwise wounded, and the remainder are in the hospital. The number of men availing themselves of the home for surgical and medical treatment has been large. The hurried closing of the United States hospitals, together with an anxiety to be discharged from the military service on the part of the soldier, threw upon the community a large number of men not able to care for themselves, who had neither

homes nor friends to care for them, and whose partially healed wounds and impaired constitutions soon compelled them to seek aid at this retreat. The number of such cases is gradually decreasing, but as reliable data show there are thirty thousand returned volunteers in this State, who are either wounded or otherwise permanently disabled, it is yet too early to set the limits to the length of time assistance will be needed by this meritorious class.

It is understood that during the current year the plans of the General Government for the relief of disabled soldiers and sailors will be so far perfected that the State may be relieved from the care of those who are so permanently injured, that with the liberal pensions now allowed, are unable to care for themselves, while it is not believed that the present or prospective necessities of these men require the institution of a permanent establishment in this State, or the continuance of the military agencies for a long period. I have no hesitation in recommending a liberal appropriation for their support during the current year.[13]

POPULATION, MANUFACTURES AND AGRICULTURE.

The report of the census of 1865 is completed, and will soon be spread before you. A comparison of this with the census of 1855 shows that in ten years the population of the State, now 3,827,818, has increased 361,602. This growth is greatest along the principal routes of travel and in commercial and manufacturing districts; but seven counties of the State, however, have failed to contribute in some degree. The population of several agricultural

[13] By chapter 255, passed April 3, the Governor was authorized to maintain the temporary home at Albany for sick and disabled soldiers, and also to continue at Albany, New York and Washington military agencies, "for the settlement and collection of back pay, bounties and pensions from the United States, due residents of the State on account of services rendered in the army and navy during the late war." The act carried an appropriation of $100,000 and reappropriated the unexpended balance of the appropriation made in 1866 for similar purposes.

counties has for many years been nearly stationary, and the tendency to western emigration, and the rapid introduction of improved implements of husbandry, will doubtless extend this condition to other farming counties. We may expect, therefore, that the marked increase of population, for many years to come, will be confined mainly to large villages and cities, where manufactures and commerce will employ the surplus labor of the rural districts.

Some changes have occurred in the proportion of the different classes of population to which I may refer. The civil war through which we have passed will, in a great measure, account for the number of males, of ages liable to military service, being relatively less than ten years ago. The native citizens of the State are 67.84 per cent of the total population, an increase of 3.73 per cent; and there is during the same period, a complemental decrease of every foreign element except the German. These tables give the number of voters at 823,873, an accession of 170,551, traced in a large degree to the naturalized citizens. It is doubtless attributable to the law of 1862, which admits an alien honorably discharged from the army of the United States to the elective franchise, after a residence of one year. As the report includes no facts of later occurrence than June 1, 1865, it fails to furnish a complete record of all persons who have entered the army and navy from this State. Still, the military statistics, obtained with great particularity, and presented in various combinations, are of value, as data for comparison and deduction, and as material for the use of the historian and economist. The negro population, now numbering 44,081, has been gradually diminishing during the last twenty-five years, while the Indians, living upon reservations, have steadily increased without being indebted to immigration for the result. This growth of the aboriginal race is opposed to the favorite theory of their final extinction, and their gradual improvement in intelligence and thrift even induces the hope that, whenever they shall have

conformed to the usages of civilized people in respect to the marriage relation, they will be prepared to receive their common lands as individual property and the principal of their annuities. The motives which incite men to acquire wealth and inheritance for their families would operate in them with appropriate effect, and they might fitly receive and assume all the privileges and duties of the citizen.

The census of 1860 reported 22,624 manufactories, having a capital of $172,895,652, and a product of $378,870,939. The present census, furnishing the statistics of 1864, embraces returns from 24,527 establishments, having a capital of $227,674,187, and a product of $463,603,877. Thus, after an interval of only five years, there is realized an increase in capital of more than thirty-one per cent; and in the value of products of more than twenty-two per cent. When considered that manufacturers were chary of minute inquiry, as unwarrantable interference with their private affairs, and many were influenced by the fear that the information obtained would be used in the assessment of taxes, it may be admitted that the aggregates of capital and product are rather below than above the truth. Regarded as the page in their history, made during the last year of an exhaustive civil war, it is a remarkable proof of the stability and advancement of these great industrial interests.

In a country where three-fourths of the people are engaged in agriculture, all information respecting its improvements and progress has peculiar interest. The productions of the earth from tillage are the chief sources of our prosperity. The census is especially interesting in its valuable and comprehensive array of facts bearing upon this noble pursuit. It is with great satisfaction that I learn, also, from the report of the corresponding secretary of the State Agricultural Society, of a marked advance in almost every department of rural industry and enterprise.

EDUCATION.

At an early day, general attention was directed to the subject of education, which was deemed essential to the security, progress and power of the people. Provision was made for the incorporation and endowment of colleges and academies. It soon became evident, however, that institutions of learning thus organized could not meet the demand of a people whose government was founded upon the theory of the general education of the masses. A more comprehensive system was needed, embracing in its operation the entire State, and making available to every family, instruction in the primary branches of education. It does not appear that the views of Governor Clinton upon this subject, communicated to the Legislature as early as 1795, resulted in the adoption of a general common school system until 1814. Since that period the progress of the system has been marked, gaining steadily in character, and extending yearly its beneficent influence. More than ninety per cent of all the children and youth who receive scholastic instruction in our various institutions of learning attend only the common schools.

The following brief summary is gathered from the records of the Department of Public Instruction, and from the report of the efficient Superintendent:

FOR SUPPORT OF COMMON SCHOOLS.

Public school moneys, including ¾ mill tax.	$1,406,080.43
Voluntary taxation in the school districts..	4,550,111.86
Rate bills	708,003.03
Other sources	714,684.90

EXPENDED DURING THE YEAR.

Teachers' wages	$4,586,211.09
Libraries.....	27,560.06
School apparatus	186,508.90
Building and repairs of school houses.....	969,618.12

Miscellaneous	$858,246.12
Balance reported on hand	750,735.93
Total number of children and youth between the ages of five and twenty-one years	1,354,967
Number of children between the ages of six and seventeen years	931,404
Number of children of school age who have attended the public schools during some portion of the year	919,033
Teachers employed in public schools for twenty-eight weeks, or more, during the year	15,664
Whole number of male teachers	5,031
Whole number of female teachers	21,450
Total number of school districts	11,732
Total number of school houses	11,552
Aggregate number of weeks' school	369,571
Number of volumes in district libraries	1,183,017
Aggregate number of pupils attending the Normal schools at some time during the year	451
Number of teachers instructed in teacher's institute	8,553
Number of teachers in teachers' classes in academies	1,469
Amount of money to be apportioned for the support of common schools, for the current fiscal year	$1,468,422.22

The report shows that the number of children and youth in daily attendance at the public schools is 30.02 per cent of the entire number between five and twenty-one years of age, or 43.67 per cent of the entire number of children between six and seventeen years of age.

Although this average attendance upon the public schools is the largest ever reported, it is, nevertheless, believed that,

by judicious legislation it may be essentially increased. If, to the number who have attended school during some portion of the year, we add those instructed for a longer or shorter time in the private schools, including colleges and academies, still the proportion neglecting these opportunities for education cannot fail to excite serious attention. With the conviction that universal education is a necessity of the State, I recommend that all impediments in the way of its free acquisition be removed, whether in the form of rate bills, poor and incommodious school houses, or the want of teachers specially trained to their vocation.[14]

The advantages derived from the two Normal schools already established, and the conceded want of a greater number of thoroughly qualified teachers, induced the last Legislature to appoint a commission to invite proposals for the establishment of four more such schools. The commission received applications from various localities, making most liberal offers of land, buildings, all necessary furniture and apparatus, or their equivalent in money, and upon full consideration, Potsdam, Cortland, Brockport and Fredonia were selected. The manifest good faith in which these propositions were made, warrants the belief that they will be carried into full effect at the earliest time possible, and that the State will have possession of suitable grounds, commodious and well furnished buildings, supplied with all needful appointments for the conduct of such schools. The commission, impressed by the public spirit manifested in generous offers from so many places, and by the interest so generally felt in the special preparation of teachers for their work, adopted the following preamble and resolution:

"*Whereas,* It is manifest to this commission that the number of Normal Schools authorized by chapter 466 of

[14] The rate bill was abolished by chapter 406, passed April 16.

the Laws of 1866 is entirely inadequate to the public requirement; *and, whereas,* liberal proposals have been made in various portions of this State for a number of schools more nearly adequate to the public wants, therefore,

Resolved, That we earnestly recommend to the Legislature to authorize the designation of location of six additional schools, on the same terms and conditions as in the act above cited."[15]

The Regents of the University represent the present condition of the colleges and academies of the State as highly prosperous. Among the valuable suggestions contained in their annual report, the plan mentioned for the better professional education of such graduates of the colleges as design to become teachers, will doubtless be regarded with especial favor.

I would also call your attention to the State Cabinet of Geology and Natural History, and the importance of completing the scientific and economic collections, and securing the publications connected with the Natural History of the State. For many years this branch of the public interests has not kept pace with the progress of knowledge.

The Geological collections hold an important relation to the general geology of the United States; and the reputation of the State is involved in their preservation and enlargement. Our material interests are so intimately connected with the advance of science, that it seems to be wise policy to strengthen these agencies. To this end, the plan submitted by Professor James Hall to the Board of Regents is deserving of careful consideration.

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[15] As to additional normal schools, see 1866, note 5, *ante,* p. 695.

CANALS AND INTERNAL IMPROVEMENTS.

The following is a statement of the canal fund for the fiscal year ending 30th September, 1866:

RECEIPTS AND PAYMENTS.

Balance in the treasury and invested Oct. 1, 1865	$3,922,980.14
Received during the year	6,704,292.89
	$10,627,273.03
Payments	5,742,638.91
Leaving a balance September 30, 1866, of	$4,884,634.12

REVENUES DURING THE FISCAL YEAR.

From tolls	$4,248,931.17
Rent of surplus water	4,293.75
Interest on current canal revenues	38,249.73
Miscellaneous receipts	18,271.47
	$4,309,746.12

EXPENSES.

To Canal Commissioners for repairs	$255,265.20	
To contractors for repairs	685,446.80	
To superintendents for repairs	292,811.89	
To collectors for salaries, clerk hire, pay of inspectors, and expenses of collectors' offices	74,584.30	
For salaries chargeable to annual revenues, refunding tolls, printing, and other miscellaneous payments	64,428.33	

For overdraft on account of Champlain canal locks, per act, chap. 543, Laws of 1866	$62,453.21	
		$1,434,989.73
Surplus revenues		$2,874,756.39

which have been transferred to the Sinking Fund as follows:

Under article 7, section 1, of the Constitution	$1,700,000.00	
Under article 7, section 2, of the Constitution	350,000.00	
Under article 7, section 3, of the Constitution	824,756.39	
		$2,874,756.39

STATEMENT OF THE CANAL DEBT,

Paying Interest on the 30th September, 1866.

	Principal.	Annual Interest.
Under article 7, section 1, of the Constitution	$4,899,600.00	$244,980.00
Under article 7, section 3, of the Constitution	11,567,000.00	688,350.00
Under article 7, section 12, of the Constitution	1,700,000.00	102,000.00
	$18,166,600.00	$1,035,330.00

The canal stock debt has been reduced during the year $1,257,985.49, by reimbursements of matured stocks, and by purchase and cancellation of stocks matured. The balances now in the Canal Debt Sinking Fund, amounting to

$2,563,623, pledged to the payment of the principal of the debt, when applied, will reduce that principal to $15,602,-976. If we may assume the canal stock liabilities beyond the means in the treasury to meet them, to stand at these figures, we shall, in six years since 1860, have reduced those liabilities $11,604,344.71.

The Auditor of the Canal Department estimates, that by the close of the fiscal year in 1868, the whole of this debt contracted prior to 1846 will have been paid or provided for, and that the entire liquidation of the general fund debt of 1846 may be looked for in the year 1872. The department has been purchasing these unmatured stocks, with a view to cancellation, and will continue to do so to the extent of the means available, when offered at prices advantageous to the State.

The magnitude which the freight transportation through the State has attained, attracts to the subject of our public works, as to their capacity and the cheapness of transit, the gravest consideration. While it has been the traditionary policy of the State to provide adequate channels of trade, during the last quarter of a century the question of present and ultimate capacity of the canals for the movement of all the produce and freights which might offer, has evoked public solicitude and discussion. The grain producing sections of the west, the commerce and manufactures of the east, and the common progress and prosperity of both sections, are alike interested. Perhaps no point has been so urgently pressed by the people of the Lake basin States, and the States adjacent, which send their surplus to the seaboard in this latitude, as this demand for cheap and prompt transit over the belt of land separating the lakes from tide water; and it is the duty and interest of the State to meet every need and just claim in this direction. Dispatch, and cheap rates of transportation, increase trade and promote the growth of population and wealth. I think, however, there is some misapprehension of the facts bear-

ing upon the questions of present capacity of our public works, to which I may properly advert.

The Erie canal has now, and has had since 1860, a tonnage carrying capacity of four millions of tons in each direction, east and west, during an ordinary season of navigation of seven and one-half months. Since that time it has not been taxed at any period with business or the transit of boats carrying tonnage to exceed very little, if any, seventy-five per cent of that capacity. In arriving at these results, I have assumed that this thoroughfare was at all times during the season of navigation in proper order, the locks in good condition, constantly in a working state, and promptly and efficiently attended by an adequate number of men.

The movement of loaded boats propelled by horse power is necessarily slow, not exceeding one and a half or two miles an hour, requiring an average of nearly fourteen days time from Buffalo to New York, including breaks in the canal and detention from other casualties. This will be generally recognized as the cause, in part, of the demand of increased capacity. The delay in the movement of freight is a matter of deep interest and importance to the consignees and shippers, when there is an active and changing market, coupled with a shipping demand. It is also to be remembered that within the last few years the high prices paid for boats, the wages of labor, and the cost of towage, have conspired to raise the charges of our present canal transportation, combined with other causes, to a higher point than is thought to be just by the people of the Western States, who are most sensitive, because most deeply interested. They ask for a cheaper and more rapid method of reaching the Atlantic markets, either by essential modification of the existing lines through our State, or the opening of new channels that must, if completed, have an important effect upon our commercial and financial prospects, and the

result of which, whether for good or for evil, it is impossible now to foresee.

This leads to the inquiry, what we can do to satisfy the claims and meet the expectations of our neighbors, and at the same time avoid a diversion of the great carrying trade from our public thoroughfares which have been established at so much expense and with so much pride by the State. We can construct an enlarged tier of locks on the line of the Erie and Oswego canals, from tide water to lakes Ontario and Erie, which will admit the passage of vessels propelled by steam of five or six hundred tons burden. It may be admitted that this is the probable extent of our ability, using the present lines of our public works. These vessels would carry threefold the tonnage of our present two-hundred-ton canal boats, and make the round trip in half the time. In these days of rapid enterprise and progress, there is scarcely a question that steam will ere long either displace or travel around other motive power, over a country so important to the commerce and comfort of the world, as the surface of land in New York, reaching from the Hudson to the lakes. With vessels of the tonnage and description I have mentioned, propelled by steam, competent engineers have estimated that the capacity of the canals will be increased to over eleven million tons, and the cost of transportation reduced fifty per cent. From an examination of their surveys and the estimates made in 1863–64, I cannot place the cost at more than ten million dollars.

After full consideration, if this be deemed the best method of meeting the demand, the question will arise, how can the means to cover this cost be obtained? Will the people of the State bear a tax of five million dollars a year to provide the necessary fund? And if they would, is it wise, or expedient to make this effort and impose this additional burden at a time when the State, county, town and municipal debt is very nearly or quite one hundred million dollars, and when the whole aggregate yearly taxation from the sources mentioned is not far below fifty millon dollars?

If the general government should aid us directly, as suggested in some quarters, or indirectly, by remitting something of the tax upon our industry or capital, to the extent of our war debt, the question would be modified in its financial aspect. But I discuss the subject outside of this consideration. Shall a new debt for canal purposes be contracted, and its reimbursement charged upon the funds raised by direct taxation, when we have reason to believe that a new debt could be paid from other sources of revenue?

The surplus canal receipts from 1860 to 1866, inclusive, amounted to $20,436,868.26, which have been applied to the payment of the principal and interest of the canal stock debt. After applying the balance in the sinking fund, the stock debt chargeable upon the canals would now be less than $15,000,000. By the application of accruing revenue, the remainder of that debt, in 1869, would be within $10,000,000. Suppose the balance of the old debt, together with the new debt for the enlargement, should be, in 1870, $20,000,000, and the yearly interest thereon, $1,200,000; it will be seen that an annual additional contribution from the revenue of $1,200,000 would discharge the principal in seventeen years. Our past experience would seem to fully justify this calculation for the future. Assuming then, to act upon this basis, a gross revenue of $3,400,000 annually, and a net revenue of $2,400,000 will extinguish all the liabilities of the present and new debt within the period mentioned. The gross canal tolls from 1860 to 1865, inclusive, was $23,398,138. If the contemplated improvement will invite an increase of traffic upon the canals, the tolls may recede, and still leave our revenue and consequent ability to pay, from that source, unimpaired.

I have discussed this subject, as will be seen, upon the theory that the plan of enlargement embraced in the Engineer's Report of 1863 and 1864, which included the Oswego and Erie canals, would be accepted; preferring rather

to present the question as involving the largest expenditure deemed necessary by any competent authority. I am informed, however, by the present able State Engineer, and feel satisfied from this and other sources of information, that a suitable enlargement, with single locks of capacity for boats of five hundred tons burden, plain but substantial work, can be effected at a cost not exceeding $6,000,000.

There is, however, no authority under the Constitution to contract a further debt for an object of this character. It is presumed that the Legislature will provide for the meeting of a convention early in the present year to revise the Constitution, and this body will have power to modify the present financial article so as to permit a debt to be created to cover the cost of this improvement, if it shall be deemed meritorious and deserving public patronage and support. It is unquestionably the policy of the State to foster and expand, to meet every need, its system of improvements, which has contributed so largely to our public revenues and to our agricultural and commercial prosperity. We are not called upon to refer to the principles of mere comity to determine how much we should do to meet the demands of trade, which our geographical position imposes. No portion of our country can ask of us reasonable facilities which it is not even more our interest to grant. In this spirit, and with these views of duty as well as policy, the representatives of the people in the Legislature, and in the Convention will doubtless meet, discuss and act upon this important question.

The grandest system of internal water communication in the world, connecting the great chain of lakes with tidewater, forming a more extended and complete inland watercourse than is to be found in any country on the globe, will not suffer from our indifference, nor be permitted to fall short of the great objects of their foundation. We shall reach forward with the liberal and wise policy which the sources of our past power and progress inspire. It is not

improbable that the time will come, when, through rapid and unbroken water communication by the northern lakes and the Hudson, equal to the demands of a vast and growing trade, a commercial union will be perfected between the Metropolis and the Mississippi river.

In this connection I invite your attention to the Hudson river improvement near Albany. There is every reason to believe that the commissioners in charge have performed their duty faithfully and with economy. Their annual statement indicates the necessity for a further appropriation.[16]

I refer you to the report of the Canal Auditor for an able and clear statement of the business and needs of the Champlain, Chenango, Cayuga, Seneca, Black River, Genesee Valley, Chemung, Crooked Lake and Oneida Lake canals, and the Oneida River improvement.

These public works open up to portions of the State which abound in the staples of wealth, no more than just public accommodations; and their complete condition to perform the highest amount of business contemplated, will stimulate the development of the vast mining and lumber resources, and the agricultural and manufacturing interests of the sections which they reach.

In compliance with the requirements of the Constitution,[e] I have thus presented such general views and recommendations as seem to me appropriate to our present condition, and conducive to the general welfare. Mutually seeking the public good, let us accept every responsibility which our respective positions impose.

REUBEN E. FENTON.

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16 The improvement of navigation of the Hudson river was continued by chapter 647, approved April 23, 1867, which made an appropriation of $150,000 for this purpose, and continued the commissioners in office.

e Const. 1846, Art. 4, § 4.

SPECIAL MESSAGES.

January 2. To the Assembly: Transmitting for the action of the Legislature, a resolution proposed by Congress, amending the Federal Constitution by adding the Fourteenth Amendment, as follows:

ARTICLE 14.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

§ 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

§ 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." [See note 1.]

January 3. To the Assembly: Transmitting the annual reports of the Commissioners of the Niagara Frontier Police, the Metropolitan Police Commissioners, the Commissioners of the Metropolitan Fire Department, Board of Commissioners of Rinderpest, Commissioners from the State of New York to the Universal Exposition at Paris, the Commissioners to co-operate with the trustees of the National Soldiers Cemetery at Antietam, Maryland, and the Commissioners of the Metropolitan Board of Health.

January 9. To the Assembly: Transmitting the report of the Commissioners appointed to locate the Hudson River Asylum for the Insane. [See note 9.]

January 17. To the Assembly: Transmitting the report of the Commissary General of Ordnance.

January 22. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 22, 1867.

"I transmit herewith a special report from the board of commissioners created by chapter 751 of the Laws of 1866. Having encountered embarrassments in effecting a sale of the hospital grounds as required by such enactment, the commissioners deemed it expedient and compatible with the trusts committed to their charge to suspend all proceedings in this particular, and to report the facts to the Legislature.

According to these statements, further legislation is necessary before an advantageous sale can be made. The suggestion of the board that authority should be given to the Commissioners of Quarantine to secure a landing and boarding station at some other locality by an exercise of the right of eminent domain, if it cannot be acquired by purchase, is worthy of careful consideration.

The facts contained in the report bearing upon this and other matters within the jurisdiction of the commission are of general interest, and their views and recommendations are respectfully submitted to the intelligent action of the Legislature. [See note 10.]

R. E. FENTON."

January 23. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 23, 1867.

"I transmit herewith the memorial of sundry citizens of the counties of Albany and Rensselaer, alleging various grounds of complaint and controversy between themselves and persons having claims for rents and services affecting lands which they occupy, and claim to own in fee. It is believed by the memorialists that grievances exist which require a remedy, and that adequate relief can be given by the Legislature, but the nature of the relief desired is not indicated. It is well known that a controversy has existed for many years in respect to the matter to which the memorial refers, and it appears that the courts of the State have decided against the views entertained by the memorialists, and have held that the contracts for the payment of rent, and the performance of services reserved in leases in fee, may be enforced against the lands. How far this operates to the injury of the tenants, so as to give them the right to demand relief, and how far it is in the power of the Legislature to afford it, if it ought to be given, are questions upon which I express no opinion, but leave it to the judg-

ment of the Legislature; and I respectfully recommend that the subject of the memorial be fully and fairly investigated. It is proper to express my earnest hope that a legal plan, wholesome in its operation, can be devised which will terminate these unhappy differences.

R. E. FENTON."

January 24. To the Assembly: Transmitting the annual report of the Quartermaster General.

January 29. To the Assembly: Transmitting the annual report of the Commissioners of Quarantine.

February 2. To the Assembly: Transmitting the annual report of the Cooper Union for the Advancement of Science and Art.

February 4. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 4, 1867.

"Deeply impressed with a sense of the public loss, I announce to the Legislature the death of Washington Hunt, ex-Governor of New York. Honored by his fellow citizens with election to distinguished offices, prominently identified with the administration of the government of the State, this afflictive event is the occasion of common grief. Commanding alike in public position and private life the respect and confidence of a people familiar with his services and character, I recommend that fitting expression be given to these sentiments of consideration and regard.[18]

R. E. FENTON."

February 11. To the Assembly: Transmitting a statement of the reprieves, commutations and pardons granted during the year 1866.

[18] The Senate and Assembly on the 4th of February, adopted resolutions of condolence on the death of former Governor Washington Hunt.

February 15. To the Assembly: Transmitting the report of the chief of the Bureau of Military Statistics.

February 26. To the Assembly: Transmitting a communication from the Secretary of the Navy, requesting that jurisdiction of certain property adjacent to the navy yard at Brooklyn, be ceded to the United States.

February 26. To the Assembly: Transmitting the following communication from the Governor of Illinois, relative to a monument to the memory of Abraham Lincoln.

"STATE OF ILLINOIS:

EXECUTIVE DEPARTMENT,
SPRINGFIELD, *Feb.* 2, 1867.

"To His Excellency R. E. FENTON, Governor of the State of New York:

"DEAR SIR.—I am directed by the National Lincoln Monument Association to address you upon this subject, and take the liberty respectfully to invite your attention to the enclosed memorial, and to request that you lay the same before the Legislature of your State now in session, with such recommendations as you may feel the importance of the subject requires, and your own views may permit. After nearly two years of continued efforts to secure the necessary means to build a monument over the remains of Mr. Lincoln by private subscriptions and donations, we feel satisfied that we have reached nearly the full amount that may be expected from these sources, and that a public duty next to our obligations to the memory of this great and good man requires us to directly appeal to the several loyal States, through their Legislatures, to aid the Association in securing what is believed will be the necessary sum to build an appropriate and suitable National Monument over his remains.

The State of Illinois has responded to our memorial and petition by granting an appropriation of fifty thousand dol-

lars. We have in the hands of our treasurer, invested in interest-bearing national securities donated by private subscriptions, after the payment of all expenses, seventy-five thousand dollars. We believe we will hardly be justified in attempting to build a monument for the purposes stated that will cost less than $250,000. We have, at present, but one-half of this amount. We are not without hope that the Legislature of your State may feel disposed to approve our action and the conclusions at which we have arrived, and to aid our Association by such an appropriation as shall encourage us to hope that the laudable object we have in view is not to fail, but is to be supported by that just and liberal public opinion, which, during his administration, so cheerfully and steadily supported him.

I shall be most happy to afford you any information you may desire about the history of the organization and action of our Association, and shall be much pleased to receive either from yourself or from the Legislature of your State any suggestions in reference to this subject.

Very respectfully,
Your obedient servant,
R. J. OGLESBY, Governor."

The communication was accompanied by a memorial from Governor Oglesby and members of the National Lincoln Monument Association, with the articles of incorporation, by-laws, etc.[19]

March 8. To the Assembly: Transmitting the report of the Commissioners of Public Accounts.

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[19] The supply bill, chapter 481, contained an appropriation of $10,000 to be paid to the treasurer of the National Lincoln Monument Association for the purpose of aiding in the erection of a suitable monument to the memory of Abraham Lincoln, "when evidence shall be furnished to the Comptroller that the additional sum of $240,000 has been contributed to the fund to be raised for such purpose, and that the amount secured will be sufficient to build the monument."

March 15. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *March* 15, 1867.

"I transmit herewith a communication from Hon. Geo. W. Blunt, pilot and *ex officio* commissioner of the Harbor of New York, with inclosures giving information relative to alleged encroachments on the New Jersey side of the Harbor.

R. E. FENTON."

March 26. To the Senate:

Veto of a bill entitled "An act to authorize the construction of a railroad in Christopher Street and other streets and avenues in the city of New York."

"It is proposed by this bill to create a railroad corporation by the name of the 'Crosstown Railroad Company,' and to give it authority to construct and operate a railroad with a double or single track, commencing at the North river at the foot of Christopher street and thence along that street to Ninth street; along Ninth street to First avenue; along First avenue to East Tenth street; along East Tenth street to the East river, and thence returning through East Tenth street to West Tenth street, and along West Tenth street to Washington street, and along Washington street to Christopher street; thence to the place of beginning.

It also authorizes the corporation created to construct another road commencing at the foot of Duane street, North river, and running through West street to Chambers street; along Chambers street to James Slip; along James Slip to South street; along South street to the ferry at the foot of Catharine street; thence returning through South street to James Slip; along James Slip to Chambers street; along Chambers to Duane street, and thence along Duane street to the North river.

The bill also provides for the construction of a third

railroad commencing at the foot of Twenty-eighth street, North river, and along Twenty-eighth street to Second avenue; along Second avenue to Thirty-fourth street; along Thirty-fourth street to First avenue; thence returning through Thirty-fourth street to Second avenue; along Second avenue to Twenty-ninth street; along Twenty-ninth street to Ninth avenue; along Ninth avenue to Twenty-eighth street, and along Twenty-eighth street to the North river.

I have been thus particular in referring to the scope of the bill in respect to the territory which the corporation is empowered to appropriate to its own use, in order to call attention to the fact that the franchise granted is of very great magnitude, and that grave considerations are involved in the question whether such a bill should become a law.

Without considering the important interests to be affected by the proposed enactment, or the objections that are urged against legislation of this character, I should feel constrained to withhold my assent from the bill upon the ground that it is in conflict with article three, section sixteen of the Constitution, which provides that ' no private or local bill which may be passed by the Legislature shall embrace more than one subject, and shall be expressed in the title.'

As I understand the provisions of the bill under consideration, it provides for the construction of three distinct lines of railroad, in no way connected with each other; and, therefore, would seem to embrace three subjects instead of one, as enjoined by the Constitution; for it can hardly be claimed that three distinct railroads are one and the same thing, even if owned by one corporation.

In addition to this, the sixth section of the act authorizes the proprietors of the Tenth street, Broadway and Eighth street line of stages, to change their route, so as to allow them to run up Avenue C, two blocks to Twelfth street;

through Twelfth street to Broadway, and through Broadway to connect with the old line of Eighth street. This provision is obviously a different subject than the construction of a railroad, and for this reason the bill is obnoxious to the section of the Constitution to which I have referred.

Doubtless, the policy of confining the contents of a local or private bill to one subject, was to prevent combination of diverse interests; also, that the title of the bill must express the object, was obviously to attract the attention of all parties interested to the proposed measure, to the end that any objections which might be deemed tenable, could be made known to the Legislature, and thus prevent the infliction of an injury to the rights of any private party, or to the interest of any locality.

It is entirely clear that the title of this bill does not, in any essential degree, disclose or indicate the character of its provisions. It purports to be 'An act to authorize the construction of a railroad in Christopher street and other streets and avenues of the city of New York,' and it confers authority to construct at least three railroads, and for the transfer of a line of stages from the streets they now pass over, to others in which they have hitherto possessed no rights. If this bill can be sustained, it would be equally valid if it authorized the construction of a railroad in every street and avenue in the city of New York. It is hardly possible to see what objections may exist to the transfer of a line of stages from Tenth street to Avenue C, Twelfth street and Broadway, and it is quite probable that no person immediately interested in those streets had notice of this intended enactment. Certainly the title of the bill does not convey the slightest intimation that it was the purpose to interfere with any of the established stage routes in the city. Nor from the title would any of the residents or owners of property on Ninth street, Tenth street, Washington street, Duane street, Chambers street, Twenty-eighth,

Twenty-ninth, and the other streets and avenues named in the bill,—not including Christopher street,—have any definite understanding that it was the purpose to construct a railroad over those particular thoroughfares. I am clearly of the opinion that, regarding my constitutional duty, I should not approve of this bill for the reasons already assigned.

I cannot, however, omit to mention some other features of this bill which in my judgment are open to grave objections.

There is no provision fixing the amount of the capital stock to be issued; for the payment in of any capital stock, nor for the duration of the corporation. The company is not required before commencing operations to raise one dollar of money, or give any evidence whatever that it is intended in good faith to construct and operate the road. There is, therefore, no provision affording any security for the creditors of the company, or to those who may sustain any injury by its operations; and there is no personal liability upon its corporators or stockholders. It would seem to be reasonable that an act conferring a franchise so important and extensive, and granting power to exercise the right of eminent domain, should contain some provision for the security and protection of creditors, even if it did not seem practicable to so provide in respect to those who may sustain injury by reason of the construction of the road.

It will not be inferred that I question the great pecuniary value of the franchise proposed to be granted. Its value, however, does not obviate the importance of guarding enactments of this character with all the restrictions and conditions which are usually deemed essential to the protection of the public interests and the rights of the individual citizen. In a former message relating to New York city railroad grants, I referred to their admitted value, and suggested that the public treasury should therefore be

benefited by the gains accruing from these gifts. If this object is sought to be carried out in the bill under consideration, I must think the provision very indefinite, and possibly wholly inadequate.

'And said company shall pay five per cent of the net receipts of the company to the city for each car run thereon,' is the language of the second section. If the purpose and scope of this requirement should be understood by anybody, the time for payment, the manner, and under what form of accounting or statement, will still remain unexplained by anything contained in the bill.

The various provisions confer very extensive powers upon the corporation in respect to entering upon streets and taking property for the purposes of the company, and the restrictions in the bill are very few. It is true that the second section directs that the running of roads shall be subject to such reasonable rules and regulations as the common council of the city of New York may from time to time prescribe; but the fourth section perpetually enjoins the corporation of the city from allowing any other railroad to be constructed upon the streets and avenues named, ' or from doing any other act to hinder, delay or obstruct the construction or operation of said railroads.' Furthermore, the city corporation is commanded to give its aid to the railroad company; to promote the construction and protect the operation of said railroads, and any act or thing done in violation thereof shall be void. I cannot doubt that the provisions of this section confer upon the railroad company the entire control of the streets and avenues named, at least, during the construction of the road, and the corporation of the city is forbidden to do anything that shall interfere with or impede their operations. In fact, the corporation of the city is excluded from all police government over the streets, if it shall interfere with or in any way impede the operations of the company.

The owners of property on the streets, or those having

peculiar interests in them, and the citizens generally, are left, as it appears to me, without adequate protection against the possible annoyances of the acts and conduct of those who, it may be, are stimulated to an equal or greater degree by the hope of private gain, than the discharge of a public duty, and who may not at all times be entirely careful to respect and protect interests which may come in collision with their own.

The important interests involved in every such extensive grant of a railroad franchise, require the most careful and attentive consideration.

The city of New York has grown to such magnitude, its interests are so various and complicated, that in respect to its streets and avenues, it is not easy to see what policy is the best adapted to subserve the convenience of the public, and at the same time protect the rights of private individuals, when stern public wants demand innovation. It follows, of course, that mere private interests must yield. Yet, they are nevertheless to be respected, and it is perhaps not too much to say, that as a general rule, the views of the owners of property upon streets and avenues should have great weight in determining whether a given street should be converted into a railroad track for the use of a private corporation, or preserved open and free to all classes of vehicles, in accordance with the theory of its original dedication to public use. As before remarked, private interests must give away to the public necessities, but it rarely happens that a community thus situated and thus interested, array themselves in unbroken opposition to a just and needed public undertaking. In the case under consideration, no petition has been presented in its favor, while large numbers of remonstrances have been made by the owners of property along the proposed routes, and by other citizens residing in the city of New York. In fact, from my information, the opposition along the streets and avenues designated in the bill, is almost unanimous.

It has been held by the court of last resort that the running of a railroad upon the streets of a city is not a use of it contemplated when originally dedicated as a public highway.* It is probable that this rule is not altogether applicable to the city of New York; but I regard it as just in cases where a public thoroughfare is, by a special act, to be converted to purposes not originally contemplated; that provision shall be made as far as practicable, for the protection of rights which may be directly invaded by any operation deemed essential to public convenience. At least, it has seemed to me that some general law could be safely and judiciously enacted, with proper safeguards to protect the public, placing this subject it may be, in the hands of proper local authorities, to bestow grants and franchises of this description, in such manner as would cause the least injury to individual rights and a fair return to the treasury for the privilege enjoyed.

I always regret to be obliged to differ with the Legislature, but upon careful examination I do not find that the bill before me is framed upon the general principles I have indicated, or indeed, that particular attention has been paid to interests that may be largely affected by it. I, therefore, respectfully return the bill for your further consideration."

The bill was not passed over the veto.

April 11. To the Senate:

Veto of a bill entitled "An act regulating the carrying of passengers and property on the New York Central and other railroads of this State."

"Section first of this bill declares that 'it shall be lawful for the New York Central Railroad Company hereafter to demand and receive two and a half cents per mile for each and every passenger transported on their road, with his

* See Wager v. Troy Union R. Co. (1862), 25 N. Y. 526, and cases cited.

or her ordinary baggage.' The second section provides that 'it shall be the duty of every railroad company in this State to carry freight offered to it from this State with as much dispatch as possible; and all freight offered at any freight station of any such road, to the extent of the capacity of the company's warehouses at the place where offered, shall be sent therefrom within ten days after the receipt of such freight, unless prevented by accident, the direction of the consignee, or unavoidable causes; and no discriminations in regard to dispatch shall be made in favor of freight from other States.'

In 1853 the Legislature passed a law authorizing the consolidation of the Albany and Schenectady Company, for shipment on its road, and Troy, Utica and Schenectady, Syracuse and Utica, Rochester and Syracuse, Buffalo and Lockport, the Mohawk Valley and the Syracuse and Utica direct, Buffalo and Rochester, Rochester, Lockport and Niagara Falls Railroad Companies, or any two or more of them.

The passage of this act was urged upon the ground that it would facilitate the transit of passengers and freight between the seaboard and the West. The charter of some of these roads, when first incorporated, restrained them from carrying freight of any description. This restriction was, from time to time, removed by the Legislature, until the right to transport freight throughout the entire year, was conferred, upon the condition, however, that such freight should pay to the State tolls equal in amount to which they would have been subjected had they been transported on the canal. The supposed necessity of protecting the State revenues, by preventing competition with the Erie canal, was the declared justification of this restriction. In accordance, however, with a more liberal and progressive policy, in 1851, the Legislature passed a law removing this condition, providing that 'it should not be necessary for any railroad company in this State to pay any sums of

money into the Treasury of the State on account of the transportation of property on any railroad on and after the first day of December in the year 1851,' thus removing all restrictions of this character upon internal commerce, and, in obedience to the demands of trade, allowed this withdrawal from the revenue of the canals, that the people might enjoy, in a larger degree, the advantages of cheap intercommunication.

The act of 1852, above referred to, provided that when two or more of the railroad companies named in this act, are consolidated, said consolidated companies shall carry way passengers on their road at a rate not to exceed two cents per mile. Thus it will be seen, that while pursuing the wise policy of making every concession which could facilitate and lessen the cost of transportation, the Legislature was careful to protect the rights of the people by limiting the price which should be exacted of the traveling public.

Relief from this restriction is sought through the provisions of the bill herewith returned.

A bill containing similar provisions was, after careful consideration on my part, returned to the Honorable the Senate, without my sanction, on the 28th day of April, 1865.* The reasons for withholding my signature then, as well as in the case at the close of the last session of the Legislature, press upon me with superadded force at this time, and impel me to like action. It was then urged in favor of the proposed increase of fare, that the inadequateness of the compensation did not afford the stockholders a proper return upon the capital invested. In my message to the Senate, referred to, I used the following language:

'Should the enhanced prices complained of continue to prevail, and the managers be thereby forced to forego the declaration of a dividend, the stockholders would not be

* *Ante*, p. 659.

then called to endure a burden more oppressive than has been sustained by many corporations and interests which have not had relief extended to them by legislative enactment. * * *

'If experience shall not prove the embarrassments, under which it is said to labor, to be but of a temporary character; and if the proposed reforms in its future management shall not secure to capital an ample recompense, I shall then be most willing to co-operate with the Legislature in affording such relief as may be wise and necessary.'

Has this contingency occurred?

Up to the time relief was first sought and the subject brought to the attention of the Legislature it was not claimed that the company, from 1853, had not had a period of almost uninterrupted prosperity. The revenue of the company for the year ending September 30, 1854, from passengers, freight and other sources, was $5,918,334.50, and for the year ending September 30, 1864, from the same sources, the receipts were $12,997,888.83, being an increase of $7,079,555.33. During this period, dividends were paid to the stockholders averaging above seven per cent.

An examination of the annual report of the company, made to the State Engineer and Surveyor, shows that the net earnings for the year ending September 30, 1865, amounted to the sum of $1,609,362.81 — equal to 6 24-100 per cent. on the amount of the capital stock; that the value of the road and equipments was $32,701,919.56 — being more than nine millions of dollars in excess of the capital stock of the company. In addition to which, it had other assets, being cash on hand, stock and bonds of other companies, bills receivable, and supplies on hand, amounting to over three millions of dollars more.

For a more full understanding of the average prosperity and condition of this corporation, I respectfully submit a

comparative statement of the passenger and freight business for different years since the consolidation:

Earnings from passengers for year ending September 30, 1853, upon the roads consolidated under the act of April 2d of that year..	$2,829,668
For the year ending September 30, 1866.....	4,360,248
For the year ending September 30, 1858.....	2,532,646
For the year ending September 30, 1861.....	2,315,932
Earnings from freight for year ending September 30, 1853, upon the roads consolidated under the act of April 2 of that year.....	1,835,572
For the year ending September 30, 1866.....	9,671,919
For the year ending September 30, 1858.....	3,700,270
For the year ending September 30, 1861.....	4,664,448

From the above it will appear that the earnings of the road from passengers in 1866 over 1853 have increased 54 1-11 per cent.; 1866 over 1858, 72 1-6 per cent.; 1866 over 1861, 88 1-4 per cent., and that the earnings from freight have increased in 1866 over 1853 426 11-12 per cent.; in 1866 over 1858 161 5-10 per cent.; in 1866 over 1861, 107 9-25 per cent., so that the increased income of the road seems to be fully equal if not in considerable excess of the increased price of materials and labor for running the road. The comparisons hold good in the result of the operations of the road for the year 1866. During that year the road has paid for all repairs and expenses of every kind, including National, State and local taxes, and $1,377,915.38 for fuel, a large provision for the future, with six per cent. dividend to stockholders, leaving $486,630 cash on hand as surplus earnings of the year — equal to nearly two per cent. on the capital.

The report of the company shows the net earnings for the last fiscal year to have been $2,039,014.21 — equal to 7 83-100 per cent.; and that the total receipts of the road were $14,596,785.68, being an excess of $621,261.29 over

the receipts of 1865. It thus appears that at the height of extravagant cost in running the road, the net earnings — although not fully distributed in dividends — equal more than ten per cent. — being more than in most other permanent investments which subject the individual owner to taxation. It is clear that the income on the nominal capital invested, is more than the interest paid by the National and State Governments, which with the advantage of the geographical position of the road and the general prosperity attending it, justifies the high market value of the stock as exhibited during the past year.

It must be admitted that this road is a great and important interest, in which the public feel a laudable pride, and I cannot doubt, would respond promptly and cheerfully to any just demand for its protection and prosperity. It is not enough to say that the road passes with easy grades over the most densely populated portion of the country, reaching thriving villages, large towns and populous cities, through well cultivated agricultural districts, studded with extensive manufacturing and milling establishments, which furnish an immense freight and passenger business at all seasons of the year. To these, the road is indebted for large and increasing patronage, and in return is supposed to give regular, speedy and economical transit to passengers and freight. It is a case of mutual advantage; and mutual protection should be given and secured. I will not urge that experience has demonstrated the impracticability of organizing an incorporated company with unrestricted power to make demands on the public, that would not take undue advantage of the privilege. Organized or associated capital — so important to enterprise and advancement — may thus wisely be restrained from the tendency to encroach upon the rights and interests of the people. The just measure of privilege on the one hand, and of restraint on the other, is the true function of legislation.

With the large income of the Central Railroad Company,

which cannot fail to be greatly increased, without increasing the fare — when prices fall to something like their former standard — the propriety of raising the fare at this time is not apparent. It will not be denied that there has been some falling off in the price of labor and material — not so rapidly, however, as was expected. Very few doubt that this decline will continue — it is to be hoped moderately — until stable rates are reached based upon specie value. Heavily laden as the people are with burdens, it may well be doubted whether they will sanction additional taxation to augment the very respectable profits of this prosperous corporation.

If it were susceptible of demonstration that this company had been suffering for a period from temporary and extraordinary causes, it might still be questioned whether it would be wise to grant relief unless the loss were greater than to other similar investments of capital, or such as threatened to impair the usefulness of the road, and then for only a limited period. It is certainly well that we should feel a joint and common interest in returning as rapidly as may be to a normal condition of business and values. It is evident, however, if the policy of relieving every interest adversely affected by the unusual causes of the past few years, prevails, that the public will lose one great incentive to efforts which are necessary to restore us to the natural and ordinary conditions which we all deem so desirable. Many have suffered in diminution of business or profits — perhaps no class of persons more than those who, from inclination or habit, have confined themselves to operations which only permitted legal rates of interest. Capital invested on bond and mortgage has hardly paid — after deducting national, State, municipal, county and town taxation — more than four per cent; and the same is true of capital employed in many other ways. It may be asserted of agricultural investments, generally, that the net income in the more favorable periods can

hardly least of the profits derived by the Central Railroad Company.

It must be borne in mind that this valuable franchise was granted by the State, not less for the public accommodation than for private gain. It is believed by many persons of good judgment, that the managers of the road could, in the exercise of rigid economy, reduce expenditures to an extent which would enable them to increase their present dividends without prejudice to the public good.

With these views earnestly entertained, and these reasons respectfully submitted, I return this bill to the Senate, without my approval."

The bill was not passed over the veto.

April 16. To the Senate:

Veto of a bill entitled "An act to authorize the construction of a railroad in Broadway, Lexington Avenue and certain other streets and avenues in the city of New York."

"It is proposed by this bill to confer upon certain persons named therein, and their assigns, authority to construct and operate a railroad with double or single track; commencing at the South Ferry, at the foot of Whitehall street, and running thence through and along Whitehall street and Broadway, with a double or single track, to the upper side of the Bowling Green; through and along Broadway, with a double track, to Union Square; thence, with a double track on the east side of Union Square, to and through Fourth avenue to Twenty-third street; through and along Twenty-third street, with a double track, to Lexington avenue, through and along Lexington avenue, with a double track, to its northeasterly termination to be extended to such northerly termination as fast as said avenue is opened, graded and paved; with branches therefrom, with double track, through and along Sixtieth, Seventy-second and One Hundred and Tenth streets, to the Central

Park; also, connecting with a double track in Broadway, at the upper end of the Bowling Green, to, through and along Broadway, State and Whitehall streets, with a single or double track, to the said South Ferry, together with the necessary turnouts, switches and convenient stands for the proper working and accommodation of the said railroad, on the said route or routes.

The city has grown to such proportions, and its power and attractiveness as a seat of trade, surround every question which relates to its expansion and convenience with general interest. To extend its commercial capacity; to add to the economy of time and money, and to afford to those who labor or do business within its limits, access to the less crowded portion of the Island, are matters which should be carefully considered.

The necessity for more rapid transit, upon some well devised plan, from the lower to the upper part of the Island, is unquestionable. The benefits to accrue not only to the city residents, but to all persons doing business in this commercial metropolis, are so apparent that I need not refer to them. It seems to me plain that this bill does not meet the requirements of the case. Owing to the large and constantly increasing business centering in Broadway, with an immense throng of vehicles, no surface railroad could secure the rapid transit, or operate with that ease and safety which would justify its construction. Indeed, it may well be questioned if it would not contribute to yet greater delay, and add to the embarrassment, confusion and obstruction of that already greatly crowded main artery of city travel.

The bill under consideration is subject to the specific objection, that it compels all actions relating to, affecting or arising under the bill, to be commenced in the Supreme Court of the First Judicial district. There can be no good reason why persons whose rights may be affected by this bill, or the operation of the road it authorizes, should not

have their privilege to bring their actions to protect or enforce their rights in such judicial districts as, under the laws of the State relating to actions, is now secured to such persons, and not be confined to the First Judicial district.

It is a further objection, that the consideration declared to be provided, is wholly disproportionate to the conceded value of the franchise. Indeed, no provision is made for the payment into the treasury of any sum whatever, except 'the same license fee annually for each car run thereon, as is now paid by other city railroads in said city,' a sum, it is believed, altogether too small. It is not a sum regulated according to the value of the franchise, nor according to what the city authorities may hereafter deem just, but the bill simply provides that the present license fee shall be the measure of equivalent for the valuable privilege bestowed on the grantees by this bill.

In further discussion of this important measure, and as applicable thereto, I venture to renew the suggestions in my message to the Senate on the bill to 'authorize the construction of a railroad in Christopher street and other streets and avenues in the city of New York.'*

'The important interests involved in every such extensive grant of a railroad franchise, require the most careful and attentive consideration.

'The city of New York has grown to such magnitude, its interests are so various and complicated, that in respect to its streets and avenues, it is not easy to see what policy is the best adapted to subserve the convenience of the public, and at the same time protect the rights of private individuals, when stern public wants demand innovation. It follows, of course, that mere private interest must yield. Yet they are, nevertheless, to be respected; and it is not perhaps too much to say, that, as a general rule, the views of the owners of property upon streets and avenues, should

* *Ante*, p. 796.

have great weight in determining whether a given street should be converted into a railroad track for the use of a private corporation, or preserved, open and free to all classes of vehicles, in accordance with the theory of its original dedication to public use. As before remarked, private interests must give way to the public necessities, but it rarely happens that a community thus situated, and thus interested, array themselves in unbroken opposition to a just and needed public undertaking. In the case under consideration, no petition has been presented in its favor, while large numbers of remonstrances have been made by the owners of property along the proposed routes, and by other citizens residing in the city of New York. In fact, from my information, the opposition along the streets and avenues designated in the bill, is almost unanimous.

'It has been held by the court of last resort that the running of a railroad upon the streets of a city, is not a use of it contemplated when originally dedicated as a public highway. It is probable that this rule is not altogether applicable to the city of New York, but I regard it as just in cases where a public thoroughfare is, by a special act, to be converted to purposes not originally contemplated; that provision shall be made as far as practicable, for the protection of rights which may be directly invaded by any operation deemed essential to public convenience. At least, it has seemed to me that some general law could be safely and judiciously enacted, with proper safeguards to protect the public, placing this subject, it may be, in the hands of proper local authorities, to bestow grants and franchises of this description, in such manner as would cause the least injury to individual rights, and a fair return to the treasury for the privilege enjoyed.' In addition to the advantage to be derived from thus referring the whole question to the local authorities, the Legislature would be relieved from one of the perplexing subjects that annually comes with power to excite and disturb the public deliberations.

The reasons which impelled me to withhold my signature from the bill referred to, operate with equal force to restrain me from giving my approval to this. They have been submitted to the Senate, and have received careful consideration, and my own conviction of their soundness has been confirmed by the unanimous approval of your honorable body. In view of the sanction which these suggestions have thus received, and the firm conviction of their correctness resting upon my mind, arising from a patient reconsideration of them, as well as for other reasons appropriate to this bill, and to which I have referred, I am compelled to return it for your further consideration."

The bill was not passed over the veto.

April 20. The Legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

May 15.

Memorandum filed in the office of the Secretary of State with the following bills, which became respectively chapters 917 and 918.

"The bills in aid of the construction of the Oswego and Midland, and of the Southern Central Railroads, respectively, provide for the exemption from local taxation, for a limited period, of the town, city and village bonds issued in aid of those objects, when held or owned by those residing in the counties through which the roads are to be constructed.

It may well be questioned whether it would be wise to adopt the policy of exempting securities of this class, under ordinary circumstances, from liability to taxation in common with other property; and it is not without some hesitation that I have concluded to affix my signature to these bills. The enterprises which they are designed to

aid are meritorious, and the early completion of the roads is of great importance to the districts which they are to traverse. They will doubtless add greatly to the valuation of property subject to general taxation, and there seems to be entire unanimity in the counties to be affected by the bills, in favor of the local exemptions proposed. No exemption is asked in regard to State taxation.

In view of these considerations, and without committing myself as to any future action in cases not presenting the same special aspects, I think it my duty to approve these bills."

May 15.

Veto of an act entitled "An act to encourage and aid the building of railroads."

The records of the Executive Department contain the following:

"STATE OF NEW YORK:

EXECUTIVE DEPARTMENT,
ALBANY, *May* 15, 1867.

Hon. FRANCIS C. BARLOW, Secretary of State.

DEAR SIR:

Near the close of the recent session of the Legislature, the bills herewith transmitted were presented for my approval, in which provision is made for extending the aid of the State to railroad corporations in modes not hitherto adopted. In view of the novelty of the forms for relief proposed, and the importance of the interests involved, I think it due to the public to make a brief statement of the considerations which control my action in regard to these bills.

I transmit to you without my signature the bill entitled, 'An act to encourage and aid the building of railroads.'

This is a bill appropriating public moneys to an indefi-

nite amount — not exceeding $500,000 — to encourage and aid companies duly organized in the construction or completion of railroads, and adding to the State tax one-third of a mill for that purpose. Its important provisions are as follows:

'Section 1. Whenever any railroad company or companies duly organized under the laws of the State, shall within two years hereafter build and complete twenty continuous miles of railroad in any part of the State, where a parallel road is not already built or in process of building, within an average distance of ten miles thereof, the said railroad company or companies shall receive from the Treasurer of the State, from the general fund, to be paid upon the warrant of the Comptroller, five thousand dollars per mile for each mile so constructed; provided that no such appropriation shall be paid, unless accompanied with the certificate of the State Engineer and Surveyor, that the said road is complete and in good running condition for at least twenty miles; and the provisions of this section shall apply to all such portions of any railroad now organized and in process of construction, as may hereafter be constructed or completed.

§ 2. A state tax of one-third of a mill upon every dollar of the valuation of the real and personal property of the people of the State, for the year 1867, or so much thereof as shall be necessary to raise a sufficient sum to carry into effect the provisions of this act, but not to exceed $500,000, shall be levied, assessed and collected by the collectors of taxes for the several counties, and all the proceeds thereof shall be paid into the treasury by the county treasurers to the credit of the General Fund, and the same is hereby appropriated to pay for the work designated by this act, and the said sum is hereby appropriated for public purposes, to aid in the construction of railroads. The Comptroller shall draw his warrant upon the Treasurer, from time to time,

for the proceeds of such tax as the money shall be required to pay for the work herein authorized.

§ 3. Every railroad company that shall apply for aid under this act shall, within ninety days after the passage of this act, file with the State Engineer and Surveyor a general description of the road and the number of miles to be constructed during the year, and on the first day of June, 1868, and in 1890, (meaning 1870) the State Engineer and Surveyor shall certify to the Comptroller the number of miles of road completed according to the terms of this act, and if the sum hereby appropriated is insufficient to pay five thousand dollars per mile, the Comptroller shall divide *pro rata* to the said roads according to the number of miles completed, according to the terms of this act.'

The practical effect of the bill is to direct the levy of a State tax for half a million of dollars, and to offer that sum as a bounty to any and all railroad corporations, which may choose to comply with its provisions, by constructing or completing the construction, of twenty continuous miles of railroad. The amount to be paid to any particular company, as well as the amount to be paid to the companies in the aggregate, is not determined. It is not, however, in any event to exceed the sum of $500,000. The corporations to whom the gift is to be apportioned, are not ascertained; the sums to be given to them respectively are contingent, and the amount of the tax to be levied on the people of the State is uncertain, except as to its maximum limitation. The assistance is tendered without reference to the locality or utility of the roads, the necessity of State aid in building them, or the wealth or resources of the corporations engaged in their construction.

The bill in my judgment is in conflict with the provisions of our State Constitution. The eighth section in the seventh article of that instrument provides that no money shall be paid out of the treasury, ' except in pursuance of an appropriation by law ' and that every law making such

appropriation, 'shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.' The thirteenth section of the same article provides that every law which imposes a tax 'shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.'* The intention of these restrictions is illustrated by the language in the twelfth section, prohibiting the contracting of any debt in behalf of the State, unless such debt shall be authorized by a law for some single work or object, to be distinctly specified therein.'

It was, obviously, the purpose of the framers of the Constitution, to prohibit appropriations from the treasury, unless by virtue of a law fixing the particular sums appropriated, and distinctly specifying the particular object to which they are to be applied. They declared that it should not be enough, even that the specific object or sum be distinctly defined by law, unless so defined in the particular act making the appropriation. In this case, there is not only no such distinct specification, but there is none in any other law. The particular sum to be paid, and the particular objects to which they are to be applied, depend on the future pleasure of the various railroad corporations, and not on a precise declaration in the bill of the present will of the Legislature. It is not sufficient to say that the sums appropriated by the bill, though now indefinite, will be made definite by the subsequent action of the several railroad companies; this would be to defeat the actual purpose of the prohibition. It is not even an answer to the objections to say, that though the specific objects to which the particular sums are to be applied, are not distinctly stated in the bill, there is a statement of the general purpose of the Legislature, 'to aid in the construction of railroads.'

* See People ex rel. Hopkins v. Kings Co. (1873), 52 N. Y. 556.

The mischief it was intended to guard against by the constitutional provisions, was the appropriation of public moneys for general objects, not specifically defined in the body of the proposed act; and the remedy was to require the particulars to be stated and submitted, each upon its own merits, to the deliberate judgment of the Legislature.

Entertaining these views, I cannot affix my signature to the bill."

Following this veto, and in the same communication, the Governor stated his reasons for approving the Oswego and Midland and Southern Central Railroad bills as set forth in the foregoing memorandum. For convenience of reference, and in accordance with the general plan of this work, the memorandum of approval and the veto are presented separately. The communication to the Secretary of State bears the Governor's signature.

1868. JANUARY 7. LEGISLATURE, NINETY-FIRST SESSION.

REUBEN E. FENTON, Governor.

ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE DEPARTMENT,
ALBANY, *January* 7, 1868.

TO THE LEGISLATURE:

Through the favor of Almighty God, the year which has just drawn to a close has been crowned with the blessings of peace and prosperity.

The great and diversified interests of our State impose duties of the utmost delicacy and responsibility upon the legislative department of the Government. The condition of our finances naturally presents itself as a leading subject of consideration, intimately connected as it is with our

general affairs, and engrossing as it should, a large measure of public attention.

The report of the Comptroller, which I commend to careful attention as an interesting and comprehensive document, shows the debt of the State September 30th, 1867, after deducting the balance of sinking funds unapplied, to be forty-four millions, one hundred and fourteen thousand, five hundred and ninety-two dollars and thirty-five cents.

There is a natural and just solicitude as to the ability of the State to sustain the burdens resting upon it, and in regard to the continued ease with which taxation has so far been borne. It is apprehended in some quarters that there are financial trials impending which will prove far more severe than any in the past. It seems to me that there is only required a prudent economy in all matters pertaining to the administration of Government, and a thorough revision of the whole tax and assessment system to vindicate a reasonable expectation of our continued prosperity. Our wealth and our resources are so vast that no reasoning founded upon our past condition during periods of great public indebtedness, is directly applicable now. Material wealth in every form has immensely increased. This is conspicuously true of New York, as it is of a great area over which new States are forming. As a fair measure of this advance, it will be seen that the New York city banks in November, 1860, as represented by their loans, conducted a business of one hundred and twenty-two millions of dollars, and at the same date in 1867, the volume of their loans was nearly two hundred and forty-eight millions of dollars, or more than double the business of 1860. Hardly less significant, if not in so great a ratio, is the advance in most departments of business and enterprise, as will be found by reference to the tables of commerce and tonnage; railroad and insurance capital; mercantile, manufacturing and mechanical employments, and the value of real and personal estate.

The amount to each person of our tax for 1866, paid to the General Government upon an approximate estimate, was, from internal revenue sources, $8.80; upon custom duties, $5.15; making a total of $13.95. Placing our population at four millions it would amount to the sum of fifty-five millions, eight hundred thousand dollars. The aggregate of State, county, town and city taxes, can hardly exceed this sum by ten millions of dollars. If the assessed valuation of taxable property was the true index of its real value, the burdens imposed might be regarded with great uneasiness, if not with just alarm. But no such disquietude has been felt at the centers of business; real property has maintained its prices; manufactures have prospered, and trade has been remunerative. According to the census of 1865, in an area of 28,297,142 acres of land embraced in the State, about 16,000,000 of acres are improved, and the value of the farms is placed at nine hundred and twenty millions, three hundred and forty-nine thousand, three hundred and thirty-one dollars; an increase of thirteen ten-hundredths per cent. in five years; and the valuation of farm stock, agricultural implements, furniture, and investments in manufactures, swells the amount to twenty-four hundred and seventy-three millions, three hundred and ninety-eight thousand, five hundred and forty-nine dollars. This enumeration does not include the amount invested in commerce, articles of personal adornment, and many other items of personal property; it is probable, however, they fully equal the value of those I have named. I think it is safe to assume that the aggregate valuation of the whole real and personal property of the State will not fall below forty-five hundred millions of dollars, as against sixteen hundred and sixty-four millions, one hundred and seven thousand, seven hundred and twenty-five dollars returned to the State Assessors, and upon which their equalization was based. Upon this statement of value, the whole aggregate of Federal, State and local taxes would be less than three per cent.

May we not take another view of the case, and inquire whether that part of our population belonging to the productive class are able, from the annual profits of labor and enterprise, to sustain the estimate of one hundred and twenty millions of dollars taxation. The aggregate of our population, according to the census of 1865, referred to, was 3,831,777. Excluding from this number females, and males under twenty-five and over sixty years of age, as non-producers, we have left 742,166 persons. It is obvious, upon this theory, that these sustain the great burden of taxation, and that the average paid by each is about one hundred and fifty dollars; full one-half of which sum is for purposes within our own State. When it is understood that a large number of these seven hundred and forty-two thousand one hundred and sixty-six persons from their wealth, pay many times one hundred and fifty dollars, it follows that the remainder pay less, and so little, that the burden adjusted upon a real knowledge of the true value of the property each and all possessed, would be indeed light. It will be borne in mind also, that the amount will annually be diminished both from the extinguishment of debt and the increase of population and wealth.

It is an error, however, to suppose that females and minors contribute nothing to our practical resources as elements of productive wealth. It is to be remembered that all invested capital is productive to the community as well as to the party making the investment, and that a very large proportion of the wealth of the State is owned by females, by minors, and by citizens who have passed the limit of three score years. These, though not for the most part active laborers, are, through the investment of their property in the various departments of corporate enterprise, including railway and navigation companies, banking and manufacturing, and all other similar corporations, availing themselves constantly of the agency of others to advance our general interests and prosperity, and augment

the wealth of the State. They pay a proportion of our State and National taxes upon the property thus invested, besides sharing the burdens common to us all, incident to the operation of the revenue laws.

The convergence of vast interests in New York, as the great commercial and financial center of the nation; our extensive operations, delicate as they are important, and the large share we are called upon to contribute to the support of the General Government, seem to justify more extended discussion.

In further considering the subject, it may not be profitable to discuss, or important to settle the question whether the rebellion could have been suppressed with less sacrifice than it has cost us. With a united North, none will doubt that it could have been. But the public debt is upon us, as the unavoidable result of the war; and notwithstanding its great burdens, we may yet congratulate ourselves that they are far short of the averted ruin of a divided country; and if we are called upon to deplore the disasters of the struggle, we may also rejoice in its compensations. Among these may be found its lessons of warning, its test of parties and their principles, its development of the patriotic endurance of our people, and the assurance it brings of the stability of our institutions.

A debt created in maintaining the perpetuity of our government and in defense of invaluable rights, is one which all honest men will agree must be paid. It is one for the payment of which we have all pledged our faith. It is our common interest to pay it. It is essential to the preservation of our public credit no less than to the maintenance of our personal, our State, and our National honor. There is hardly a man, woman or child that has not an interest in our public securities. There are three hundred and ninety millions in legal tenders and fractional currency, and nearly three hundred millions of bank notes secured by Government bonds. There are sixteen hundred national

banks with four hundred and nineteen millions of capital, and five hundred and sixty millions on deposit, with their officers, stockholders and depositors. There are also State banks, individual bankers, trust, life, fire and marine insurance companies, with their numerous parties in interest, and to this add the savings banks, whose aggregate deposits in this State alone amount to one hundred and thirty-one millions of dollars, with over five hundred thousand depositors. All these institutions not only have directly more or less of Government securities, but all their debts and liabilities are payable in the legal tenders of the Government. Not to dwell on this vast array of individual and corporate interest in our public securities, it is enough to say that it is a debt due from the Government which was saved, to the people who saved it. It is just, however, to the Government and the people alike, that this obligation should be discharged in such a manner as shall most conduce to the interest and the honor of both. The public should not be subjected to undue burdens by forcing the premature payment of the principal; nor should we fail to provide for the prompt payment of the interests and such a reduction of the principal as will not impair our productive energies. Such a forced payment is uncalled for by a prudent regard to the public faith or the public good; and as it requires continued heavy taxation, we may wisely forbear to apply such a test to the forbearance and patience of the people.

We have been thoroughly educated in the doctrine that every generation, so far as possible, should pay its own indebtedness. There are exceptions, however, to this correct rule; most prominent among them is the case before us, in which great trials have been endured and great sacrifices made, not only to protect the present rights of the people, but to perpetuate the blessings of good government. Weighed down by the derangements and devastations of the most formidable war known to history; for the

benefit of the coming generations, as well as for the safety and security of the present, we require time for the renewal of our industry, to replenish our means, and to gather strength from reconstruction and increased population. It will be honor enough — when, in the not far distant future, from recuperated energies the burden will be lighter — to illumine our history with the extinction of a public debt created in defense of our liberties. We are called upon, therefore, by every consideration of interest and of duty, to relieve labor from its oppressive burdens, and as most of the evils which the rebellion has entailed upon us center in taxation, to the solution of this problem the thoughtful consideration of all is invited.

Congress can, and doubtless will, in their good judgment, strike hundreds of items from the tax lists which are more fruitful of annoyance than of revenue; and it should reduce and re-adjust the taxes so as to have them fall where they would be least felt, most readily paid, and most easily collected. With a judicious reduction and adjustment of taxes, wise retrenchment, and a firm and impartial enforcement of the revenue laws; with industry relieved and enterprise encouraged, and the vast treasury of our natural resources made tributary to our progress, we look to the future of the country with calm and assured confidence. Our national production has doubled in thirteen or fourteen years, and we may reasonably expect with taxes so reduced as not to impede national development, our power from production will be twice as great at the end of that period of time. At least, an estimate based on past conditions of growth, can hardly fail to be realized in the future.

The re-adjustment above suggested is the more essential in view of the high price of commodities and the low price of gold, which tend as stimulants to foreign importations. It is hardly to be expected, however, that we shall ever get back to the prices which prevailed prior to the rebellion.

I need not advert to the causes further than to remark, that gold has depreciated or lost in its purchasing power from its greatly increased production within the last few years. In countries where a gold currency prevails, prices have steadily increased, and from the prospect and returns of the mines, this cause must inevitably continue to affect prices in a greater or less degree.

In regard to local taxes, I am convinced that our method of assessment is essentially defective. It cannot be doubted that a much nearer approximation to equal assessment could be attained if our laws provided for specific returns of all taxable property. No one can question that the personal property of individuals very largely escapes taxation. The personal property of this State in 1860, after deducting corporate property, left the amount assessed to individuals at about one hundred millions of dollars. This class of property in Georgia was assessed that year, after deducting the slave property at the estimated average value of four hundred dollars a slave, at two hundred and ninety-two millions; in Mississippi, at three hundred and thirty-three millions; and in South Carolina, at two hundred and sixty-two millions of dollars. In Ohio, for the year 1866, the amount was four hundred and six millions. The same year in this State the personal property indicated was about two hundred and thirty millions. How much of this was corporate property, in the States referred to for comparison, I am not informed, but it could not have been very considerable. Evidently the assessment is based on different principles, designed to produce a more just distribution of burden; for there can be no doubt but the personal property of individuals in this State is many times more than that held in the above named States. The existing laxity and inequality of assessment operates with severity and injustice upon real estate, and upon those who are taxed more nearly or entirely to the sum of their personal property. It is likewise evident that this defective

assessment of personal property throws an undue and disproportionate share of the State tax upon counties where but a moderate amount of personal property is held. Real estate may be, and doubtless is, generally undervalued; but a uniform increase in its valuation, while reducing the percentage, will not affect the amount of tax, and it is apparent that it would be reduced by just so much as personal property is brought to light and made to bear its equitable share of the burden. If discrimination may be made, it should not be to the prejudice of real estate, because personal property costs the public more for its protection, and generally yields a larger proportionate profit. We have nothing to fear from unwillingness in the people to contribute fairly to a just distribution of taxation, but unequal as it is, the murmur of discontent may be expected. A burden which may easily be borne when distributed uniformly and equally, placed on the shoulders of a few, or upon the many with unjust discrimination, becomes oppressive.

The laws in several of the States require individuals to furnish returns of their property as the basis of valuation. The tax laws of Ohio are represented to me as working satisfactorily, and I believe the same experience has obtained in some of the eastern States. In this or some other and better form, a remedy should be provided for the imperfections of our existing system. I commend this important matter to your early consideration, and respectfully suggest, that if the difficulties incident to the question should seem to you to require it, it might be advisable to provide for a competent commission to investigate the subject, and report promptly to the Legislature such facts as they can collect, with such recommendations as may be deemed advisable, in view of the practical results of legislation in other States in aid of this general object. The end to be attained is one in which the entire community is deeply interested. Every class of our citizens recognize the

necessity of reform, and all will cordially acquiesce in such legislation as will secure a fair and just equalization of the general burden. Every citizen will be content to do his part, if he can be assured that he is charged with no more than his own equitable and legitimate share.

CANALS AND CANAL FUND.

Balance in the treasury and invested, Oct. 1st, 1866	$4,884,634.12
Received during the year	5,681,329.02
	$10,565,963.14
Paid during the year	6,725,027.48
Leaving a balance, September 30, 1867.	$3,840,935.66

REVENUE DURING THE FISCAL YEAR.

From tolls	$3,992,161.29
Rent of surplus water	1,165.00
Interest on current canal revenues	51,437.88
Miscellaneous receipts	5,593.62
	$4,050,357.79

EXPENSES.

To Canal Commissioners for repairs	$313,681.88
To Contractors for repairs	691,033.52
To Superintendents for repairs	70,162.51
To Collectors, for salaries, clerk hire, pay of inspectors and expenses of collectors' offices	76,168.96

To salaries chargeable to annual revenues, refunding tolls, printing and miscellaneous payments	$69,145.78	
		$1,220,192.65
Surplus revenues		$2,830,165.14

Surplus revenues, which have been transferred to the Sinking Funds, as follows:

Under article 7, section 1 of the Constitution	$1,700,000.00
Under article 7, section 2 of the Constitution	350,000.00
Under article 7, section 3 of the Constitution	780,165.14
	$2,830,165.14

Canal debt, paying interest on the 30th September, 1867:

	Principal	Annual interest.
Under article 7, section 1 of the Constitution	$3,247,900.00	$162,395.00
Under article 7, section 3 of the Constitution	10,775,000.00	646,250.00
Under article 7, section 12 of the Constitution	1,700,000.00	102,000.00
	$15,722,900.00	$910,645.00

The aggregate balances of the sinking funds, applicable to the canal debt at the close of the fiscal year, were $3,214,940.10. None of the stocks named in the foregoing table mature before October 1st, 1868, and then only $247,900. The department has purchased $2,443,700 of five

and six per cent. unmatured canal stocks at a discount of $75,187.50, and redeemed $53,300 of stock overdue and not before presented for payment, making a total of $2,497,000 purchased and cancelled during the year. On the first day of October, 1868, the actual and estimated balances in the sinking funds will exceed $4,000,000 applicable to the payment of the principal of the canal debt. At the close of the fiscal year in 1860, the aggregate of this debt was

Present debt	$27,107,321.48
Amount of reduction in seven years.....	15,722,900.00
	$11,384,421.48

Should the surplus of $4,000,000 be applied in October, 1868, the debt will be reduced to $11,722,900. Upon the basis of the average revenues of the canals during the last seven years, the whole will be fully extinguished in 1874; and the Canal and General Fund debt, now a lien upon the canal revenues, will be discharged in 1877.

The taxes levied and money appropriated for the improvement of the Champlain canal, according to the plan prescribed by the act of 1864, will not complete the work, and the further sum of $20,000, is required for that purpose, as now estimated. The enlargement of the remaining locks of this canal to the dimensions of those on the Erie, seems essential to its full measure of usefulness. The amount needed for such an improvement ought not to exceed $250,000. The importance and value of this branch of our system of public works will not be doubted; nor that the completion of such enlargement would more than meet the fair demands of production and enterprise, and ultimately repay the investment.

The Genesee Valley canal is one of the State works finally constructed under the present Constitution, and still retains its inalienable character. The revenues of this canal

in good condition, it is believed, would be fully adequate for necessary repairs and maintenance, but its improvement will become a charge upon the public treasury. For several reasons, during the summer months, the deficiency of water on the summit level of this canal has impeded, and latterly wholly interrupted navigation near its southern terminus. If we continue to refuse the amount necessary to restore the canal to a navigable condition, it is equivalent to a declaration that the southern portion of the line may be abandoned. It is estimated by intelligent authority that the difference of tolls arising from a judicious expenditure on this canal, would pay six per cent. on $250,000. If this be true, our pecuniary interests will not be impaired, while our good faith will be maintained, in granting the aid needed to restore to use this public work.

Upon the extension of the Chenango canal, the sum of $842,146.00 has been expended, and the work is still unfinished. The appropriation has been exhausted, and the work upon it has been stopped. The deliberations of the Constitutional Convention do not warrant the belief that, in an amended Constitution, the creation of a debt for canal purposes will be authorized. Our experience derived from the history of our public works, is adverse to the economy, to say the least, of a temporary suspension in their prosecution. Assuming that it is just to public expectation, and advantageous to the public interests to complete this work in the not far distant future, I respectfully invite your attention to the consideration of the question whether it may not be well to proceed with the work without further delay.[1]

The other canals of the State are in a fair and prosperous condition, and by their contributions to the public wealth and business, justify the policy that has inaugurated, maintained and extended these great avenues of inland com-

[1] Chapter 715, approved May 7, made numerous appropriations for canal purposes which should be consulted for details.

merce. The constantly augmenting productions of the great west; the iron, coal and lumber trade; together with freight from other sources of development, which attain with each returning year still greater proportions, give increased support to our public works, and incite to yet further advance in perfecting the facilities for internal transportation. For detailed statements as to their particular condition and needs, I respectfully refer you to the report of the Canal Commissioners and the Canal Auditor.

CLAIMS AGAINST THE GENERAL GOVERNMENT.

The settlement of the unadjusted accounts between the State and the United States, has been urged as rapidly as their complicated nature would permit. Of that portion for war expenses, amounting to $1,529,345.18, which had been suspended, and which was unadjusted at the date of my last annual message, the sum of $879,058.22 has been allowed and passed to the credit of the State, leaving $650,-286.96, which is now in the course of settlement, but under existing regulations, subject to technical objections which involve some delay. I have also caused to be presented the claim arising under chapters three hundred and ninety-seven and four hundred and twenty-one of the laws of 1862, amounting to $281,845.86, which, with the preceding sum, will nearly balance the amount advanced by the United States, including the direct tax; the difference being only $2,842.72. The value of the clothing and equipage retained and issued to the National Guard of the State, has not been ascertained, but under the present orders of the War Department, there can be no doubt of an early adjustment of this portion of our account upon an equitable basis. In addition to the foregoing accounts, are several of comparatively small amounts, created by authority of acts of the Legislature in 1862, 1864 and 1865, and which, as soon as prepared, will be embraced in the schedules for payment. The State has taken the initiatory measures to

secure a final and complete settlement, by the appointment of commissioners, under the provisions of chapter three hundred and fifty-seven, Laws of 1867, and it is to be hoped that Congress will speedily authorize the appointment of a similar commission on the part of the United States, clothed with full power to allow all equitable claims. Every proper effort should be made to this end, and when fully accomplished, there will be cause for congratulation, that the State has emerged from the great conflict with so little direct burden for ordinary military expenses.

MILITARY DEPARTMENTS.

The National Guard of the State has improved during the past year in organization, discipline and practice. It has been my pride, hardly less than my duty, to promote such a condition of our military force, that, in ordinary periods, it might inspire general confidence, and in emergencies to which a great State is subject, its powers could be displayed with advantage and honor.

In a State so strong in its varied elements of power, so rich in means and resources, with a population so sensitive to social and commercial revulsions, and a frontier so extended and exposed to the inroads and invasions incident to war, the importance of maintaining a thorough and sufficient military establishment can hardly admit of debate. It assumes the dignity and importance of a coordinate branch of the civil government, and as such, is entitled to liberal recognition and support. A free government, however perfect its constitution and laws, cannot safely dispense with a well organized militia. It is a safeguard and protection from those extraordinary outbreaks which occasionally threaten to disturb the peace of society, and the security of property; and when occasion requires, it may always be relied upon to aid in the enforcement of law and the maintenance of order. It may be regarded as the power in reserve for the preservation, in great exigencies, of the

rights of the citizen and the safety of the State. It will be conceded that there should be at all times a good organization of volunteers well armed, equipped and uniformed at the public cost, practiced and disciplined to the best attainable extent in peace, and ready for any emergency that shall call them to arms. It seems to me, however, that we should undertake to maintain only so large a force as may be placed on a complete war footing and trust for its increase, from time to time, to our advance in population, enterprise and prosperity. I therefore respectfully recommend the reduction of the present minimum of the National Guard to a number that can be fully equipped, thorcughly disciplined and qualified for active duty.[2]

I submit for your consideration also the propriety of authorizing encampments of the militia in various sections of the State during the coming season. Such a measure would tend to incite a spirit of generous emulation, productive of improvement in the drill and discipline of our arms-bearing population. Assembled in large bodies; subjected to rigid inspection; and schooled in the routine of military duty, the men become, in some degree, inured to the exposures and hardships of the more severe service of the field.

The present numerical strength of the National Guard is about forty-five thousand officers and men. For a detailed account of the condition of the military forces of the State, I refer you to the report of the Adjutant General, which will soon be transmitted for your consideration.

The other military departments of the State afford evidence of the progress common to every branch of our militia system. The duties of the officers of my staff have been performed with intelligence and fidelity; and in all projects of reform within the province of their respective depart-

[2] By chapter 651, approved May 6, the maximum number of national guard in time of peace to be fully armed, equipped and uniformed was fixed at 30,000.

ments, they have uniformly given zealous and efficient co-operation. Their several reports showing the business of the bureaus under their supervision, will be duly submitted for your information.

SOLDIERS' AGENCY AND HOME.

Incident to the close of our late war, are certain appeals for aid which enlist the higher sentiments of our nature, and command hearty and general appreciation. Prominent among these are the collection and preservation of the evidences of the patriotism of our State; of the endurance and valor of those of her sons who participated in that great struggle; and of the leading historical incidents of this memorable period of our history. To extend to the widows and orphans of those who died for their country every facility in the preparation and prosecution of their claims on the General Government, and the prompt and economical collection of the amounts due them, is a duty we have cheerfully recognized and faithfully endeavored to discharge. It is, however, a continuing obligation, and the work is not fully performed. Then there are those with wounds received amid the shock of arms, who still have needs that our sense of justice and gratitude will neither deny nor ignore. Many are incapacitated from competition in the market of unskilled labor, whose years and previous training unfit for higher employments. The character and extent of the provisions yet made by the General Government for this class are inadequate to their condition and wants; and I feel assured that it is only necessary to refer to them and to the origin and extent of their disabilities, to secure the most thoughtful consideration on your part, and the most ample provision for their comfort.

From the report of the Chief of the Bureau of Military Statistics, it will be seen that the labor of preserving and arranging the memorials and historical narratives, has been continued. Very much of interest and value has been added

during the year. The sum of ten thousand, nine hundred and seventeen dollars and eighty-one cents has been received for the "Hall of Military Record" since the last report; making the whole sum for that purpose up to the present time thirty-six thousand, two hundred and eighty-eight dollars and ninety-six cents.

The work has already been commenced on the new capitol under favorable promise of early completion, and I venture to renew the suggestion made in my last annual message that a suitable room, both as to arrangement, safety and location, may be provided in that building for the purpose I have indicated, without increased public expenditure or inconvenience to other public interests.[3] In view of the fact that hardly one-half of the amount contemplated by law, has been raised for the "Record Hall," and that it is not probable that the balance will be fully paid in, it has seemed to me that the funds thus far donated for that purpose could very properly be used in founding a permanent soldiers' home for disabled men of our volunteer forces. This would not be such a departure from the original object as to disappoint the purpose of those who contributed to the fund; on the contrary, it would meet their hearty and earnest approval. It is presumed that the generosity of the citizens of Albany, who placed at the disposal of the State a suitable lot for the proposed hall, would find equally liberal expression in any arrangement for the permanent location of the home in the buildings now used for that purpose.

The military agencies at Washington and Albany, have met with great success in their beneficent work. Over six hundred and sixty-five thousand dollars have been collected since January 1st, 1867; more than forty thousand letters have been written, and there are now in the agencies, pend-

[3] By the act of 1878, chapter 369, the capitol commissioners were directed to set apart in the new capitol a room to be known as the Hall of Military Record.

ing action at the departments in Washington, over eighteen thousand claims, involving at least two millions of dollars. I think it not too much to say that no public trust, requiring so much detailed labor, has been administered with more economy, nor is there any charity with stronger claims, or more appropriately under the care of the State.

There are at present in the "Soldiers' Home" two hundred and seventy-nine inmates. Of these one hundred and one have lost one or more limbs; seventy-five have been otherwise mutilated, and the remainder are in the hospital for treatment or disabled from sickness. During the summer months some of these men obtained light employment, and for a time supported themselves; but on the approach of winter, both because of a decreased demand for such labor, and their inability to withstand the severity of the season, many of them have returned to the institution. A large number enter the Home for temporary assistance required by re-opening wounds or recurring sickness. In health, by the aid of a pension, they can maintain themselves, and it is only when compelled from these causes that the shelter of the Home is required. During the first year, nearly three-fourths of the admissions were of this character, and during the past year about the same proportion have been received. This large class, by far the most numerous, and alike entitled to consideration, are not within the requirements for admission into the United States Home, which receives only those who are permanently disabled. Something more should be done by us. It is probable that an arrangement could be made with the United States authorities for the support of those entirely disabled, in a home within our own State and under our supervision and control. My observation leads to the opinion that the soldier leaves his own State, however pleasant and generous the retreat within another may be, with extreme reluctance. It was a patriotic duty to accept the trials of war, but it is hard, after the war is over, to separate these

suffering and maimed defenders so widely from home and friends, and to remove them from the State whose safety and peace have been secured by their unfaltering courage and devotion. I do not overestimate the pride and the gratitude of the people of New York, in assuming your readiness as their representatives to meet the utmost requirements of these most deserving men. It is therefore scarcely necessary to recommend that an appropriation be made for the establishment of a permanent Home. Should the Legislature, however, not concur in these views, I respectfully ask that provision be made to continue the present arrangement until such time as the transfer of the wholly disabled to the United States homes can be effected, and until the partially disabled are in such condition as to justify their return to their families, neighbors or friends.[4]

PUBLIC CHARITIES.

A liberal and humane policy in relieving the subjects of misfortune and affliction has prevailed in this State from an early period in our history. Through legislative action and the various channels of private benevolence, the means and facilities have constantly been multiplying for providing for the wants of the hapless and destitute in all the departments of public charity. It no sooner became apparent that the provision for the protection and treatment of the insane at the Utica asylum was inadequate, than measures were taken to provide the needed accommodations. Two other institutions were projected and are now in process of construction: the Willard Asylum at Ovid, and the Hudson River Asylum at Poughkeepsie. The central portion and one wing of the former are nearly finished, and it may be opened for the reception of patients during the present year. The commissioners in charge seem to

[4] The supply bill, chapter 717, appropriated $50,000 for the maintenance of the Soldiers Home at Albany.

have shown a wise regard for economy in prosecuting the work by using materials found on the lands appropriated by the State, and avoiding the needless and improvident expenditures which too often augment the cost of structures erected under State authority. The trustees of the Hudson River Asylum have adopted well conceived plans for the buildings, and are now engaged in the earnest and faithful discharge of their duties. The necessity which called for this extension of the benevolent care of the State over this class of helpless children, will continue with increasing force until these additional institutions are opened for the reception of patients. I would therefore recommend such action as will lead to their early completion, as a matter of wisdom as well as humanity.[5]

The officers of the asylum at Utica report the general operations of that institution for the past year as follows:

Under treatment at the commencement of the year..	641
Received during the year.....	401
Whole number treated.....	1042
Discharged during the year.....	159
Discharged improved during the year.....	58
Discharged unimproved during the year.....	164
Discharged as not insane during the year.....	7
Died during the year.....	51

The commissioners intrusted with the construction of buildings for the blind at Batavia have made successful progress, but will require an additional appropriation to complete the tasteful and well-arranged structure now in course of construction. They have manifested commend-

[5] The supply bill, chapter 717, appropriated $75,000 for the Willard Asylum and $100,000 for the Hudson River Asylum for the construction of buildings.

able regard for the interests of the State; and in the prosecution of the enterprise have displayed marked intelligence, zeal, and fidelity.[6]

The Board of Trustees suggest that the number and needs of this class of unfortunate persons are such as to call for two institutions of this character. Should this view obtain, your attention is respectfully directed to their earnest recommendation for the purchase of the building at Binghamton, already selected and prepared for the temporary use of the blind.

In pursuance of an act of the last Legislature, the trustees of the Inebriate Asylum at Binghamton have conveyed the asylum property to the State. The board have continued in the discharge of their duties, and I am informed the asylum is now in successful operation. Questions relating to the change of title, and the necessity of a modified system of regulations, will doubtless be discussed in the report of the trustees.[7]

The institutions already in operation for the treatment of the blind, the deaf and dumb, and the idiotic, and those of a reformatory character are fulfilling the just expectations of the State, and producing the beneficent results contemplated; and this is apparently true of those founded by private munificence as well as those established and maintained by public authority.

The last Legislature devolved upon me the duty of appointing a board with the power of visitation and supervision over all public charities. Gentlemen of culture and

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6 Chapter 66, passed March 28, appropriated $100,000 for the completion of the Institution for the Blind at Batavia including a reappropriation of an unexpended balance of $25,000 remaining from an appropriation made in 1865 for the institution.

The supply bill, chapter 717, appropriated $4,000 for the purchase of additional land for the institution, $25,000 for furniture and apparatus, and $30,000 for maintenance.

7 See 1867, note 7, *ante*, p. 761, for further information relative to the transfer of the inebriate asylum to the State.

experience were selected for this important trust. Owing, however, to the probable changes affecting this class of interests through the provisions of a new constitution, they have not yet proceeded to make a thorough investigation of possible abuses, nor completed the plans they are engaged in maturing for the purpose of reforming existing defects, and ensuring better discipline in these charitable agencies. It is nevertheless true, that much valuable information has been elicited, and their report will have an interest commensurate with the importance of the subject.

It will be conceded that a system involving so large an expenditure of public money, embracing all classes of the destitute, the afflicted and the depraved, should be perfected as far as possible; and it is believed that the labors of a commission so intelligent and competent, will lead to reforms which will diminish the expense of maintaining these institutions, and render them still more effective as agencies of public charity.

Your attention is invited to the interesting report of Mr. John Jay, the special commissioner appointed by me to represent the State in the board of the Antietam Cemetery. The cemetery was originally founded by the Legislature of Maryland as a State enterprise for the interment of all who fell in the battle of Antietam, or during the first invasion of Lee. By a subsequent law of Maryland, it was converted into a National cemetery for the same purpose, to be governed by a board of trustees, representing the States whose dead should be interred therein, and who should join in its establishment.

Besides New York, the States of New Jersey, Minnesota, Maine, Rhode Island, Pennsylvania, Wisconsin, West Virginia, Massachusetts, Ohio, Indiana, Vermont and Michigan have joined the association and made appropriations for its support. New York has a larger interest than any of these States in this cemetery, from the greater proportion of her sons who fell in the battle. Of thirty-one officers

and two thousand four hundred and sixty-two private soldiers whose remains had been identified and interred up to the 23d of May last, nine officers and seven hundred and thirty-six soldiers were from New York, and this number has since been increased, the total burials in November last being reported at four thousand six hundred and seventy-five. A very clear and satisfactory account is given by the Commissioner of the care with which the interments have been conducted, with a view to the identification of each particular grave, and of the substantial character of the improvements on the cemetery grounds, and the prudence and judgment with which the funds have been applied. The appropriation by this State of ten thousand dollars will cover its share of the entire cost of completing the cemetery and all the proposed improvements. It yet remains to provide for head stones, with a brief inscription, for the grave of each soldier, and a *pro rata* contribution toward the monumental statue of a Union soldier keeping guard over the dead, which the trustees propose to erect at an expense of thirty thousand dollars.

STATE PRISONS.

It appears from the report of the inspectors, that there were twenty-nine hundred and twenty inmates in the State prisons on the thirtieth of September last. The management of the prisons has given general satisfaction, and the financial results are more favorable than I had at one time apprehended. It is true that the expenditures have been about one hundred and seventy thousand dollars over the receipts; but the causes which have produced this result are clearly and satisfactorily explained in the annual statement of the inspectors. While it is desirable that the receipts should be at least equal to the expenses, this cannot properly be regarded as the primary object, nor even as one of the most essential requirements of these institutions. The regulation of the mode and degree of punishment, the

safe keeping of the convicts, the maintenance of prison discipline, and the adaptation of the means employed for the reformation of the criminals, are matters of even greater importance than a fiscal balance in our favor on the prison ledger. It seems possible, however, to promote this end without drawing, under ordinary circumstances, upon the public treasury. The most favorable results from the industry of convicts have been attained at the Dannemora prison, where the inmates are employed directly by the agents of the State. It is the judgment of the inspectors, in which I am inclined to concur, that the extension of this system to our other prisons would be attended with advantage to the convicts and profit to the State.

The records of the prisons show an improved state of discipline, resulting, doubtless, from more strict administration, and the incentives to good conduct held out to the convicts under the authority of a recent act of the Legislature, allowing them to earn certain deductions from the period of imprisonment, by the careful observance of prison regulations.

It is not improbable that some modification of our prison system will be recommended by the Convention for the revision of the Constitution, and hence I forbear to enter more largely upon the discussion of this branch of the public interests. The whole subject of our prison administration; the punishment and reformation of criminals; and the exercise of the pardoning power, is worthy of grave and thoughtful consideration. Much has already been accomplished, but much more remains to be done in perfecting reforms which seem to be attainable through well guarded and enlightened legislation.

QUARANTINE — PUBLIC HEALTH — HARBOR OF NEW YORK.

The number of alien immigrants who arrived at the port of New York during the past year was two hundred and forty-two thousand, seven hundred and thirty-eight, being

nine thousand three hundred and twenty in excess of last year. Immigration is one of the sources of the wealth of our country, and an essential element of its progress and power. It is estimated that during the last twenty years about four millions of immigrants have arrived at the port of New York alone, and we may safely assume that these accessions, together with their natural increase, amount at present to eight millions, or nearly one-fourth of our entire population. While it is true that our cheap and fertile lands, our profitable pursuits, and our free institutions invite them hither, it is also true that commerce and industry generally follow the march of the immigrant. A glance at the rapid growth of our northwestern States and of some of our northern cities plainly discloses the influence of this cause upon our general prosperity.

Our recent civil war has removed the obstacles which tended to discourage the immigrant from settling in the southern portion of our country, but which will now claim to participate in this agency so important to its early recovery from the devastations of war, and the degradation of labor consequent upon the long prevalence of slavery. The commissioners of emigration deem it a privilege to extend a hearty welcome to the newcomers, and direct their footsteps to these inviting fields of industry and profit. It will be regarded as a duty we owe alike to our institutions and to the emigrant whom we invite to our shores, to encourage and foster a wise distribution over our country of these inflowing elements of National wealth and progress.

The fund under the control of the commissioners is created by a *per capita* tax of $2.50 for each alien, which is devoted mainly to the support of the sick and indigent upon their arrival at the port, and in maintaining suitable agencies to carry out the humane purposes of the law establishing the board. The landing depot at Castle Garden has been improved, the facilities for landing purposes increased, and new appliances added for the comfort and security of the immigrant. From the fund thus obtained,

large and beautiful hospital buildings have been erected on Ward's Island, where the unfortunate and afflicted are kindly cared for, and prepared for the new associations and the active affairs of the land of their adoption.[8]

The improved sanitary condition of the Metropolitan district during the past year, and the decrease in the mortality of the cities of New York and Brooklyn, are important and gratifying.

This district, the centre of American commerce and the *entrepot* of foreign immigration, though almost constantly threatened during the past season, has been secured from the ravages of epidemic disease; and the business and commercial interests of the State have suffered no interruption. The success of these efforts has justified the demand of an enlightened public, for intelligent and scientific administration of the health laws in the most populous portion of the State. It will be readily understood that our extensive commerce with nearly all parts of the world, and the vast and steadily increasing immigration to our shores from Europe, are constant sources of danger to the health and lives of our citizens from the importation of contagious and infectious diseases. From statistics furnished me by the Health Officer, it appears that since the first day of January last, one hundred and forty-eight vessels have been placed under quarantine. In addition, over two hundred vessels came from ports known to be infected with yellow fever, and these were required by law as well as by common prudence, to be detained a sufficient time to determine whether they were free from disease. The danger to which we are exposed, and the disaster that would be likely to follow from inefficient or incompetent administration of our quarantine and health laws, are not lightly to be estimated.

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[8] Chapter 857, approved June 5, "for the more effectual protection of immigrants arriving at the port of New York," authorized the commissioners of emigration to conduct investigations relative to treatment of passengers, food or drink furnished, and deaths on ships.

The hospital authorized to be erected on West Bank, under the act of 1866, has so far progressed that its final and successful completion is promised early the coming season. This, it is believed, will meet one of the great needs of the sanitary authorities, but they will still be without warehouses for infected goods, proper facilities for well passengers detained under quarantine, or a suitable landing and boarding station. The duty of the General Government to provide such warehouses is generally conceded, and I am not without hope that Congress will yet take measures to this end.

Provision was made by the act of April last, for the temporary occupation of Barren Island, as a place for the detention of well passengers under quarantine, and for a permanent station on Coney Island. A site for the latter was selected by a board of officers charged with that duty, but the commissioners have been restrained by injunction from taking possession. The law authorized the selection of a suitable site on the west end of the island. It was deemed proper that it should embrace a sufficient area to secure complete isolation, and thus avoid any possible danger from its use for quarantine purposes, but I am advised that the court has decided that the powers of the board were limited, and that they had no right to take the question of isolation into consideration. The effect of the decision has been to render that portion of the act inoperative, and your attention is respectfully directed to the question whether there should be further legislation to promote the original object.[9]

[9] The supply bill, chapter 717, contained numerous provisions relative to quarantine, including an appropriation of $25,000 for the acquisition of a site, and the erection of buildings on Coney Island for the use of quarantine officers; such sum to be in lieu of the appropriation for the landing and boarding station on Coney Island made by the act of 1867, chapter 481. The act also made an appropriation of $50,000 to be used for the prevention or spread of infectious diseases. The act also reappropriated an unexpended balance of $302,734.07 appropriated for quarantine purposes by L. 1866, chapter 751.

The Police, Fire and Central Park Commissioners have continued to discharge their important functions to the satisfaction of the people of the State, and in a manner especially acceptable to the communities more immediately affected by their action.

An act was passed by the Legislature in 1865 to authorize the erection of warehouses and docks in the port of New York, for quarantine purposes. These docks and warehouses were designed to facilitate the discharge of cargoes from vessels not infected with disease, although subject to detention by reason of exposure on the voyage, or in ports from which they sailed. At present such vessels are relieved of their cargoes by lighters, at some point in the bay considerably removed from the main land. It was supposed that the projected warehouses could be erected in the bay, not less than one and a half miles from shore, and a restriction to that effect is contained in the act referred to.

By the same act the Governor was authorized to appoint commissioners to confer with the authorities of the State of New Jersey, relative to the insufficiency of the quarantine regulations with that State, applicable to the waters, and land under water, within her jurisdiction. It has been ascertained that a suitable site cannot be found, except on lands under water, the proprietary right to which is ceded to New Jersey by the compact made with that State in 1834. The commissioners appointed have endeavored to obtain the grant, and the Legislature of that State, by joint resolutions passed in April last, designated commissioners to confer with them on the subject. The result of their conference, I am assured, will be communicated to the Legislatures of both States in time for action during the present winter.

In connection with this subject, my attention has also been called to a prosecution instituted by the late Attorney General, in the name of the people, against the New Jersey Central Railroad Company, to prevent the construction by

that company, of docks and piers projecting from the New Jersey shore far out into the bay of New York. A large area of the bay, comprising many hundreds of acres, is included within these structures. The compact between the States expressly secured to New York exclusive jurisdiction over these waters to low water mark on the New Jersey shore, but subject to the right of the latter State to construct wharves and docks. It is claimed by New Jersey that the provisions of the compact authorizing such construction, by legal implication, permit their extension and filling in with earth beyond low water mark, so far as may be found convenient for commercial purposes. It is sought on this ground to justify the erection by the New Jersey Central Railroad Company, of structures extending a mile into the bay, under grants obtained from that State. If these encroachments on the bay are continued, they will seriously interfere with the use of the harbor and the convenience of general commerce; and if they are in violation of the territorial rights of New York, this constitutes an additional and conclusive reason for restraining them. In either view, it is obvious that wharf lines on both shores of the harbor should be established, beyond which docks should not be extended. With my sanction, the commissioners appointed presented the subject to the agents on the part of New Jersey. It is hoped that a satisfactory arrangement will be agreed upon and submitted to you at an early day.

The questions involved are of the greatest importance. The foreign and domestic trade, at the port of New York, is of immense magnitude, and that city is already the rival of the leading seaports of the old world. In the hope that interests so vast may be further promoted, I think it desirable to continue the commission.

The whole subject, relating to obstructions of the harbor, and a more commodious and complete system of wharves and piers, is of grave public importance, and I respectfully commend it to your careful consideration.

SPECIAL LEGISLATION.

In my last annual message, I alluded to the importance of strict adherence to the policy indicated in the first section of the eighth article of the Constitution, which provides that corporations may be formed under general laws, "but shall not be created by special act, except for municipal purposes and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws." Acting in the spirit of this provision, the Legislature, from time to time, framed laws of general scope and application, almost wholly removing the necessity for special charters. It seems to me that this regulation should be strictly observed; and that exceptions should be admitted only in cases of extreme hardship, and when the public good clearly justifies a departure from the general rule. The pressure of private interests has led to its disregard, and we have seen individuals and associations obtain by inconsiderate legislative grants, unnecessary and extraordinary special privileges and powers. In a period of vast transactions and great commercial activity, competition in every department of enterprise finds increased stimulus, and you doubtless will be frequently invoked to advance schemes which promise individual advantages and the promotion of objects seemingly meritorious.

The danger lies in the tendency to give projects for private advantage and gain an undue prominence, to the prejudice of the vast public trusts committed to your special and immediate supervision. The last Legislature passed more than one thousand bills, of which nine hundred and seventy-four received my approval, covering twenty-six hundred printed pages. Of this number, one hundred and twelve only were of a general public character, while three hundred and thirty-seven related exclusively to private interests, and five hundred and twenty-five had merely a local bearing. If it is considered that the

work of preparing, examining and maturing these measures was compressed into a period of less than four months, it will be apparent that a great proportion of the bills must have been passed without careful examination and a deliberate consideration of their provisions and legal effect.

More than one-half of these bills were enacted during the last ten days of the session, and notwithstanding close application on my part, in the discharge of the duty devolving upon me, four hundred and ninety-four did not receive my approval until after the adjournment of the Legislature. This is not wholly an exceptional case. With my immediate predecessor, two hundred and eighty-one bills the first year of his term, and two hundred and forty the second year, were acted upon after the close of the session, and obviously from the same cause. It cannot be doubted that a firm adherence to the policy indicated in the Constitution would tend to more careful legislation, and a great reduction in the number of the laws. It is a significant fact, that the French House of Deputies, during its last session, of more than five months duration, enacted only one hundred and thirty-five laws. The Parliament of Great Britain, during the years 1865 and 1866, enacted but three hundred and ninety-six; and the 38th and 39th Congress of the United States, embracing a period of four years, enacted only three hundred and twenty-eight laws, including those of a private and public character. This comparison gives support to the prevalent opinion that we not only legislate too much, but that a portion of the measures over which the Legislature exercises jurisdiction are imperfectly considered. uncalled for, and lead to embarrassment and confusion.

Entrusted by the Constitution with the authority to impose taxes for public purposes, and charged with the duty of restricting the powers of municipal corporations to contract debts, the obligation resting upon you is alike

delicate, arduous and responsible.[a] A large portion of the tax borne by the people is the outgrowth of the recent war, the exigencies of which justified the assent of the Legislature to the large burdens assumed by the State and by localities. But the war has passed, and every consideration of policy, patriotism and interest, points to the necessity of a prudent husbandry of the public resources, and a careful avoidance of all experimental legislation for mere private or corporate ends.

EDUCATION.

There are probably few among us who, even amid the pressure of the active affairs of life, fail to recognize the importance and magnitude of our system of popular education. Our people have acted upon the theory that the extension to every class and condition of society, of the means of early education, and facilities for the acquisition of knowledge in after life, contributes to the prevention of crime, the preservation of social order, the security and stability of the government, and the thrift and prosperity of all who are engaged in the various departments of industry. Our legislation has been based on this liberal and enlightened policy, and the practical result is that our schools are open to the children, even of the poor and the homeless. We have been steadily extending facilities for instruction in the higher departments. The State has generously and wisely given aid, from time to time, to institutions struggling to rise under the disadvantage of a feeble endowment or a limited patronage. The revenue of a permanent fund, wisely established for the development of the sciences, has been liberally dispensed, and there is reason to believe that our system of education, as a whole, is meeting the just expectations of the people.

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[a] Const. 1846, art. 8, § 9.

The following summary is gathered from the records of the department of Public Instruction, and from the interesting report of the Superintendent:

For the support of Common Schools —

Public moneys, including three-quarters mill tax	$1,403,163.84
Voluntary loan taxation in the school districts	5,591,871.06
Rate bills	743,306.72
Other sources	1,134,890.74

Expenses during the year —

Teachers' wages	4,881,447.53
Libraries	24,414.86
School apparatus	211,637.82
Building and repairs of school houses	1,712,523.36
Miscellaneous and incidental	850,884.73
Balance reported on hand	1,192,324.06
Total number of children and youth between the ages of five and twenty-one years	1,372,853
Number of children between the ages of six and seventeen years	943,699
Number of children of school age who have attended the public schools during some portion of the year	947,162
Teachers employed in public schools for twenty-eight weeks or more	15,606
Number of male teachers	5,263
" female teachers	21,218
" school districts	11,724
" school houses	11,580
Aggregate number of weeks	357,137
Volumes in district libraries	1,113,147
Number of pupil teachers attending the three Normal schools	689

Teachers instructed in teachers' institutes...	9,682
Teachers in teachers' classes in academies...	1,373
Amount of money to be apportioned for the support of common schools for the current fiscal year	$2,400,134.65

The report further shows that the number of children and youth in daily attendance at the public schools is 30.62 per cent. of the entire number between five and twenty-one years of age, or 44.54 per cent. of the whole number of children between six and seventeen.

In my last annual message, I expressed the opinion that the propositions for the location of normal and training schools in the villages of Fredonia, Brockport, Cortland, and Potsdam, would be carried into full effect at the earliest practicable period. That opinion has been confirmed. The erection of the buildings has been vigorously prosecuted, and when they are finished and furnished, with the grounds upon which they are located, the value cannot be less than four hundred thousand dollars. The schools at Fredonia and Cortland will be open for the reception of pupils during the ensuing summer or early autumn. The main part of the building at Brockport is completed and occupied for a normal school, which is in successful operation. The Oswego and Albany normal schools are reported to be in a prosperous condition, each numbering as many pupil teachers as can well be provided with instruction.

The establishment of two additional normal schools has been authorized by law, one at Buffalo and one at Geneseo. The liberality and public spirit of the people of these places will not fail to consummate an enterprise of so much local and general importance. I am informed by the Superintendent of Public Instruction, that the law of last winter, which abolished rate bills and charges, though it has been in operation only since the first of October last,

is producing a very large increase of the aggregate number of pupils at the schools, and greater regularity in their attendance. It is believed that the additional tax imposed by that law, will equal the amount of money which has heretofore been raised by rate bills. It has the effect, as will be seen, to decrease local or school district taxation, by so much as it increased the general State tax. It simply transfers the burden from the few to the many; from those with limited means, but possibly with large families, to the aggregate property of the commonwealth. An examination of the assessed valuation of taxable property in the several school districts of the State, will show that even for the support of inferior schools the percentage of taxation in certain districts often largely exceeds that in neighboring districts in which there are superior schools, and the same or a greater number of children of school age. Conceding that the education of the people is a matter of common concern, to which each one should contribute according to his pecuniary ability, the justice of reducing this local district taxation by the general State tax for the support of schools, is apparent. Even should the support of free schools require an increase of this tax, I should still concur in the opinion "that in promoting the great interest of moral and intellectual cultivation, there can be no prodigality in the application of the public treasury."

In all our cities, and in most of our large villages, the education of youth is provided for by special acts, giving enlarged powers to the local authorities, or creating boards with exclusive control of the schools. They are generally well managed, and it is believed that our schools in the city, as well as in the country, have advanced the character of our population above that of any other people. If it is true, however, as asserted, that poverty, crime and ignorance, still largely prevail in our most populous cities, the result, in part at least, of neglect to educate all the young, should we not extend and improve our schools and bring every

child within their influence? In some of our cities, and especially in New York and Brooklyn, the school accommodations are insufficient, and thousands of children are unable to gain admission. The provision for higher classes and more advanced pupils, is not deficient, but the rooms for primary scholars are overcrowded. It is probable that the city authorities have power to correct this defect, but if otherwise, I feel confident that the Legislature will apply the appropriate remedy.

The Cornell University has been developed quietly and effectively during the past year. One large and substantial edifice in stone has been completed, and another is being pushed rapidly forward. A large number of professors have been chosen, and all the preparation for opening the university has so far advanced as to induce the trustees to announce that students will be received in September next. The law granting to this university the proceeds of the land grant of Congress, continued in force, will form a noble endowment, and place the institution upon a foundation which cannot fail to give it prosperity and permanence. It can hardly be doubted that the original intention of the act to promote agriculture and the mechanic arts will receive, in the progress of this university, its highest fulfillment. Combining the greatest scientific, literary and practical advantages, with a large number of free scholarships open to competition in all the Assembly districts of the State, and somewhat connected as it is with our common school system, it seems well worthy of the fostering care of the Legislature, and of the confidence of the people of the State.

I would also call your attention to the State Cabinet of Geology and Natural History, and the importance of keeping up its collections, and of completing the publications connected with the Natural History of the State, which have proved important auxiliaries in the progress of geological science. These works are cited as standard au-

thority in all parts of the civilized world. Our collections have been largely increased during the past year in many of the departments, and perhaps in no other State are the results of scientific research more diligently sought or more carefully preserved. Our material interests are so intimately connected with the advance of science in every department of investigation, that I do not hesitate to commend it to further recognition and support.[10]

The report of the Regents of the University presents the condition of the colleges and academies of the State as highly prosperous. Among the interesting suggestions contained in their statement, is that which relates to the growing munificence of individual citizens in the permanent endowment of the higher institutions of learning. It is stated, however, that instances have occurred in which parties wishing to set aside funds for educational purposes, have been at a loss how to secure their permanent application to the end in view. While the State provides free instruction for all in the elements of knowledge, it may properly encourage individual liberality, by providing whatever is needed in legislation for the protection of gifts and bequests to colleges and academies incorporated by the State, and subject to its general supervision.

STATE AND NATIONAL INTERESTS.

The predictions of disaster to the country from the emancipation of four millions of slaves, have been most signally falsified by the event. They have exercised the rights of freemen; and as they before proved themselves brave and trusty soldiers, they have now shown themselves faithful and willing laborers, and peaceful and law-abiding

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10 The supply bill, chapter 717, appropriated $5,000 for the liquidation of claims under existing contracts and for expenses otherwise incurred in the preparation of the natural history of the State. The Secretary of State and the Secretary of the Board of Regents were authorized to publish any part of the natural history in an abridged or epitomized form.

citizens. They have diligently tilled the fields which others owned, for wages hardly adequate to the support of human life, and they have submitted patiently to the wrongs which others were too ready to inflict. Availing themselves of the means of education wherever the efforts of humanity in their behalf have not been repressed by violence, they have vindicated the wisdom and justice of Congress, in admitting them to share with their late masters, in the exercise of the freeman's right of suffrage.

The propriety of this measure, like that of enrolling them in our armies during the war, became in the public mind too obvious to be postponed; it was, however, the occasion of earnest solicitude to many good and loyal men. It is no doubt desirable that those who exercise the elective franchise under a democratic form of government, should be educated and intelligent; but if the right of suffrage was restricted by such a standard, it would not tend to the extension of these advantages, or to the elevation of the humbler orders of the community. It cannot be doubted that most of the privileged class thus created, would be content to retain undiminished the power deposited in their hands; and few of them would care to raise those below them to equality of political rights. One of the leading merits of our system of representation, is its tendency to secure the benefit of just and equal laws; to interest every citizen in the general welfare and prosperity; extend to all the means of education, and to hold out inducements to honorable exertion and the prospect of advancement. But still more important than the qualification of intelligence and education is that of loyal allegiance to the government; and a condition of things existed at the south which made this a vital consideration.

It is conceded that, at the fall of the Confederacy, the States which composed it were "deprived of all civil governments." They were disorganized communities, and while they failed to escape from their obligations by de-

stroying the Union, they succeeded in renouncing their political rights under the Constitution, and in destroying their local State organizations. The President, doubtless, had authority to hold them under military rule until provision could be made for their reorganization under the authority of public law; but he had no right to institute civil government for the insurgent States. He had no power to enact or to repeal an act of Congress. Clearly these were questions for the law-making power of the Government; and to be determined, not by his will, but by the will of the Nation, expressed in the form prescribed by the Constitution. His policy, as disclosed, was to assume the prerogatives of Congress, and to exercise in those States the powers relinquished by the Confederate leaders. He not only proposed his own terms to them, but also to the Nation, and by reinstating the rebel authority with increased political power, to confer upon the vanquished the fruits of victory. His plan embraced no less than immediate representation at Washington; the Congress at Richmond having been overturned. It was proposed by him to restore those who had been defeated in war, to the position of a governing class; ruling those whom they had recently held in bonds, and making laws for the nation which they had tried and failed to destroy. It was a policy revolting to the general sense of national justice and manhood, and acceptable only to those who loved power, hated liberty, or sympathized with the rebellion. From the west, the east and the north came the voice of dissatisfaction, and the work of reconstruction was entered upon by the law making power to which it belonged.

The desire for an early restoration of the insurgent States to their practical relations in the Union, led the people to hope that the expectations held out to the rebels, had not checked the returning spirit of loyalty, which was gaining ground in each of the Southern States after the close of the war. Then it was that Congress at the first

opportunity, in a noble spirit of conciliation and forbearance towards those who had risen in arms against the Republic, proposed, in the form of constitutional amendments,[b] conditions of restoration both generous and just. I did not doubt, as expressed in my last annual message, their prompt acceptance, if the communities lately in rebellion were ready to accept the results of war, and return to the support of a government framed by our common fathers. This peace offering, which was promptly ratified by most of the loyal States, was rejected with scorn by the rebels.

They thus put it beyond all question that they were yet animated by the spirit of the rebellion. It is equally clear that there could be no restoration, so far as the issue depended on their voice, except on terms involving the abandonment of the unprotected southern unionists, and the abject surrender by Congress of increased political power in the government, to disloyal persons, as a reward for their attempts to overthrow it. This spirit was inflamed by encouragement received from official quarters, until at last, the scenes at Fort Pillow were re-enacted at Memphis and New Orleans, in the butchery of unarmed Union men, under the shadow of the federal flag. This method of reconstruction being thus closed, Congress availed itself of the only remaining opening to an early and peaceful reestablishment of these States.

It is well known that there was a large body of Union electors distributed throughout the South, consisting of those who were never in sympathy with the rebellion, and of those who, though numbered with the insurgents, were ready to accept the results of war and to return to their old allegiance. These were, however, mainly powerless, because they were largely outnumbered by those with whom they shared the privilege of access to the polls. There was

[b] U. S. Const. 13th, 14th am.

also a large body of men, composing two-fifths of the whole population, born on the same soil, equally true to the Government, and equally powerless, because they were disfranchised. If these two classes were allowed to act together in the use of the rights of our common manhood, it will be seen that the only obstacle was peaceably removed; as together, they outnumbered the rebel electors who prevented the work of reconstruction. Therefore the question to be determined by Congress was not one of abstract theory, as to the highest qualifications for a wise exercise of political rights. The question in this case, was one of practical statesmanship, in view of the actual condition of the country, and the importance of early and complete reunion. The end to be accomplished involved the peace, the honor, and the interests of the republic. It was essential to the return of order, the removal of military authority, and the renewal of commercial prosperity to the States which had been the theatre of war. It promised to secure our future unity and repose; settle our public credit on firm and just foundations, and enable the insurgents to repair the waste of war, and to bear their share of the common burden, which their crime had brought upon the country. Under their pretended State organizations, the local offices were filled by those who defied the authority of the Nation, and who had refused to take the oath of allegiance required of every legislative, executive and judicial officer in all the States of the Union, by the sixth article of the Federal Constitution.

The loyal portion of the population was for reunion on an acceptable basis, and giving assurance of our future security and repose. On the other side, the disloyal, emboldened by new hopes, were arrayed in hostility to the people of the Union. Would it have been wise, let me ask, on the part of Congress, to make these men the arbiters of reconstruction? Should we have reconstructed the insurgents into a privileged class, and disfranchise the loyal

population, for the benefit of the rebel minority? Should we have delivered over the white Unionists to the mercy of the enemies, by whom they were pursued and oppressed? Should we have remanded to a condition of serfdom the whole body of the colored race, who became, by the terms of the amended Constitution, entitled like ourselves to the immunities of free citizens? In a word, should we have rejected the aid of those who had proved their loyalty and love of liberty, by befriending our armies at the peril of their lives, and by fighting in our ranks, when victory brought no promotion to them, and when the captive could look only for slavery or death? To questions like these there could be but one response from the representatives of the loyal people.

The work of reconstruction has progressed, though for a time slowly. Constitutions have been framed, so liberal and just in their provisions as to extort commendation even from rebel generals. Those who were arrayed against the government are coming over to its support. The return of liberal institutions, it is gratifying to note, is welcomed in States exhausted by war; and unless new obstacles are interposed to delay it, we have every reason to believe that the work of restoration is on the eve of final success. While, then, we deeply deplore the loss of life and the desolations of this sad war, let us rejoice, in that it has resulted in the recognition of civil liberty as the common heritage of humanity, and in the establishment of equality of right before the law, as a fundamental principle of free government. I do not overstate the patriotism of the people in the remark, that they were never more united than now, in the purpose to hold what has thus been achieved, as the unlooked for results of a causeless and bloody rebellion for the establishment of slave empire and the destruction of the American Union.

I am aware that the obstacles interposed in the way of reconstruction, have naturally tended to withdraw the at-

tention of the people and their representatives from other matters of vital and general interest to us all. Questions affecting the condition of the currency, the volume of debt, the measure of taxation, and the rigid and systematic retrenchment of all our expenditures, come home to every household.

I appreciate the responsible duties which devolve upon you individually and collectively, as well in council as in legislation, and I need not assure you of my hearty cooperation in all that may tend to the honor and interest of the States, and to our common prosperity.

REUBEN E. FENTON.

SPECIAL MESSAGES.

January 16. To the Assembly: Transmitting the reports of the Commissioners of the Metropolitan Police Department, the Board of Commissioners of Rinderpest, and the Commissioners of Pilots.

January 17. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *January* 16, 1868.

"I respectfully transmit a communication from General U. S. Grant, late Secretary of War *ad interim,* suggesting the passage of an act ceding to the United States jurisdiction for military purposes over certain land in the harbor of New York, known as David's Island.[11]

R. E. FENTON."

January 23. To the Assembly: Transmitting the annual report of the Board of Niagara Frontier Police, and the report of the Commissioners of Quarantine.

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[11] Chapter 257, passed April 20, ceded to the United States jurisdiction over David's Island in the harbor of New Rochelle and exempted it from taxation.

January 31. To the Assembly: Transmitting the annual report of the Paymaster General, the report of the Cooper Union for the Advancement of Science and Art, and the annual report of the Adjutant General.

February 5. To the Assembly: Transmitting the annual report of the Board of Commissioners of Capital Police; and the report of the Commissioners of Public Accounts.

February 6. To the Senate: Transmitting a communication from the Secretary of the Navy, asking that jurisdiction be ceded to the United States over certain property in the city of Brooklyn purchased for the purpose of extending the navy yard.

February 26. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *February* 26, 1868.

"I have the honor to transmit an interesting report from Col. Charles B. Norton, a Commissioner from this State to the Paris Exposition of 1867. The report presents a statement of the part taken by our citizens, which is creditable alike to their enterprise, their labor and their genius.

The report is accompanied with diagrams, which will be found especially valuable to those who desire a more definite understanding of the exhibition grounds and buildings, and the position assigned to each country represented. I cannot forbear commending Col. Norton to the favorable consideration of the Legislature for his fidelity to the interests of American enterprise, and his constant regard for the comfort of our citizens who attended the exhibition.

R. E. FENTON."

For report see Senate Document, No. 39.

February 27. To the Senate: Transmitting a communication from a special committee of the State Medical Society, in regard to a system for the registration of births, marriages and deaths.[12]

March 4. To the Assembly: Transmitting the annual report of the Inspector General.

March 19. To the Assembly: Transmitting the annual report of the Commissary General of Ordnance and also a communication from the commissioners of quarantine, and a statement of the Health Officer of the port relative to danger from the visitation of cholera. [See note 9.]

March 25. To the Assembly: Transmitting the report of the commissioners of public accounts relative to disbursements for military purposes.

April 3. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 3, 1868.

"I have the honor to transmit the report of Mr. Rodney R. Crowley, a commissioner appointed under authority of a resolution of your body, passed April 17, 1867, to inquire into and ascertain what damages had been done to the lands embraced in the Cattaraugus, Allegany and Oil Spring Reservation, by trespassers, and to adopt measures for the prevention of waste, and the recovery of damages therefor.

R. E. FENTON."

For report see Senate Document No. 72.

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12 The registration of births, marriages and deaths was provided for by the act of 1885, chapter 270, passed May 12, which also created local boards of health. The subject was afterwards included in the public health law, L. 1893, chapter 661.

Section 3, subd. 4, of the act of 1885, relating to nuisances, was sustained in People ex rel. New York C. & H. R. R. R. Co. v. Board of Health (1890), 58 Hun, 595.

The act of 1893, section 41, adulterations, was sustained in Crossman v. Lurman (1901), 57 App. Div. 393, affirmed (1901), 171 N. Y. 392, and (1903) 192 U. S. 189.

April 3. To the Assembly: Transmitting the annual report of the Chief of the Bureau of Military Statistics.

April 6. To the Senate:

Veto of a bill entitled "An act to aid the construction of the Whitehall and Plattsburg Railroad."

"The bill requires the Treasurer of the State to pay $250,000, whenever the Whitehall and Plattsburg Railroad Company shall prove to the Comptroller of the State, that the road of said company has been graded from Whitehall in the county of Washington, to Plattsburg in the county of Clinton, and the iron laid on one-half thereof.

The work the bill seeks to aid is highly meritorious. Its completion would open up a region of the State abounding in mineral resources, lumber, and many of the staples of wealth, and which is now nearly inaccessible a portion of the year. I cannot, however, resist the conviction that a just regard for the public judgment, and the interests of a people largely involved in debt and heavily taxed, forbid my sanction of this appropriation. It is not essential to the consideration of the case to discuss the abstract right to take the money of the whole people to aid a corporation in the prosecution of a work of this character in a portion of the State. Whatever may have been urged or could now be said against it, in practice it has obtained, and the question presented must be decided mainly upon other grounds. It may be conceded that, under favoring circumstances, whatever tends to develop our resources and add to our commercial facilities and wealth in one district, must result in some benefit to all.

At the last session of the Legislature I gave my assent to the bill to facilitate the construction of the Whitehall and Plattsburg railroad, and of the Albany and Susquehanna, making an appropriation of $250,000 to each road. They were the only companies engaged in the construction of railroads, that sought successfully, from the Senate and

Assembly, State aid upon a definite presentation of their condition, that came to me for approval. The amount of appropriations, for general purposes, was not large, when compared with the two previous years, and it was hoped that this sum would enable the projectors of these worthy enterprises to secure their final completion; at least, that no further call for assistance from the State would be made until a more auspicious period as to our public debt.

The Whitehall and Plattsburg bill provided that, on due proof to the Comptroller, that the Company had built ten miles of its road or more, to pay $5,000, and at the same rate, from time to time, for each and every mile of such road so built and ready for equipment and operation for the distance of fifty miles. Twenty miles from Plattsburg, south, and about twenty miles between Ticonderoga and Port Henry, have been placed under contract; but the work is not so far advanced as to permit any part of the appropriation to be paid from the State Treasury, and it is not claimed that the progress of the undertaking will warrant such payment for some time to come. It is apparent, therefore, that there is no immediate need of the funds provided in this bill, and, it may well be supposed, both from the condition of the work and the terms of the present bill, that an appropriation, if expedient at any time, would be in ample season at the next meeting of the Legislature. It is not wholly improbable that the expectation which many were led to indulge, may hereafter prove well founded, and that individual enterprise will be entirely adequate to the successful prosecution and completion of this important line of improvement. If otherwise, when the need of aid shall be pressing and immediate, and under a favorable state of the finances, it is presumed a future Legislature will be equally mindful of the public interests and the just discrimination towards improvements in sections of the State which have participated but little in the benefits of our public works, while they have patiently

borne their share of the public burdens and contributed a fair quota to the common treasury.

It may be observed that an evil of this kind of legislation, is that its facility tends to invite and encourage renewed applications when commensurate appeals would enlist private capital. It will be seen also, that almost every district of the State puts in a claim for aid from the public Treasury, and with the same arguments and apparent earnestness. For example, at the present session, there is before one or the other branches of the Legislature in more or less advanced stage, bills for the

Albany and Susquehanna railroad, granting..	$250,000
Buffalo and Washington " " ..	250,000
Dunkirk and Warren " " ..	200,000
Lake Ontario Shore " " ..	300,000
Southern Central " " ..	150,000
New York Northern " " ..	600,000
Rondout and Oswego " " ..	250,000
Utica and Black River railroad, $5,000 say, for 40 miles.	200,000
Midland railroad, $5,000 for 35 miles.	175,000
Buffalo, Corry and Pittsburgh railroad.	200,000

The vast sums given by these appropriations to such objects, might well excite grave attention and uneasiness, in periods of entire freedom from debt and great prosperity, but in our present condition, it cannot fail to create profound distrust and alarm. I can understand how the attention of legislators, amid the pressing and arduous duties of a brief session, has necessarily been limited to the consideration of particular measures with reference to their general merits, but I have observed with much concern the aggregate involved in the various propositions referred to.

It must have come to the attention of all, that during the past year the people have been more restive under the

burdens of taxation, than at any previous period since the close of the war. Business has been unsettled, trade has been depressed, industry partially paralyzed, and values have become more irregular and less reliable. Profits have diminished, and until the great financial questions are firmly decided, and a permanent policy established, the horoscope of the future cannot be surely and confidently cast. This condition, which the repeated lessons of history, and our own past experience as a people, might have taught us to expect would mark the period immediately following the great war, duty and prudence alike demand shall not be disregarded. The State can no more be prosperous without economy in the conduct of affairs than individuals. A continued large debt is dangerous to our social and republican institutions. Our first care, therefore, should be to ascertain how the volume of debt can be diminished, and guard against its extension; how the measure of taxation can be reduced, and retrenchment made more rigid and systematic.

These questions come home to every household.

It seems to me that it is our plain duty to go no further in expenditure, than is required for the economical administration of Government, and the protection of those interests which are inseparably connected with the general welfare and security. The public works of the State must be maintained at all times, and but few will be found to oppose moderate aid to meritorious corporate enterprises when the public condition will permit.

I entertain a firm conviction that if the case could be submitted to the people of the State, the views I have advanced, as touching the case before us, would meet very general approval. Trusting that they will receive the concurrence of the Legislature, I respectfully return the bill for your further consideration."

The bill was not passed over the veto.

April 7. To the Legislature:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 7, 1868.

"I deem it my duty to call the attention of the Legislature to the annual Tax Levy of the city of New York.

It is well known that the corporation of the city of New York annually apply to the Legislature for the requisite authority to levy and collect by law such sums of money as may be necessary to maintain and support the city government. The amounts thus called for and authorized have been constantly increased, until the total last year was about $18,000,000. A sum so large for city government, in addition to other burdens imposed by the State and General Government, may well challenge the closest inquiry. It is, moreover, said that the application in this behalf, the present year, will rather exceed than fall below the extraordinary figures of last session.

This money is collected from the taxpayers of New York city by virtue of an act of the Legislature, and it will be admitted, that the provisions of a bill involving so many millions of expenditure, and such vast interest, should receive the most careful scrutiny and rigid examination.

The time and the circumstances under which this most important measure has been heretofore presented to me for my consideration and action, were such that I was unable to examine its various provisions with the care and the time for reflection which the magnitude and importance of the subject demand. Indeed, it has reached the Executive Chamber so late that no opportunity has been afforded to call the attention of the Legislature to any extraordinary appropriation or obnoxious provisions it might contain, and it has been found utterly impracticable to give to the subject any investigation until after adjournment. In this emergency, it will be seen that, if I had withheld my signature, the city would have been subjected to the great and hazardous inconvenience of having no means to meet its

expenditures for the coming year, and the city government must submit to abrupt suspension or be compelled to resort to the uncertain and most expensive expedient of borrowing money to meet its daily and pressing obligations. In view of the embarrassments resulting from such a state of affairs, I have been impelled heretofore, to affix my signature to the bill, entertaining grave doubts of the constitutionality of some of its provisions, and conscious that it contained many items which the Legislature, on further consideration, would have omitted. It has, likewise, been presented to me in a very imperfect state, sometimes not even engrossed, portions of it annexed in the form of riders, easily detached, or others substituted in the place of those acted on by the Legislature, and still other portions written in pencil, easily altered and erased.

My object in this communication is to call the attention of the Legislature to these practices, and I would respectfully request that this important measure receive early consideration; that the bill be engrossed pursuant to the rules of the two Houses, before the signatures of the presiding officers are affixed thereto, and that it may be presented to me for my action at least three days before your final adjournment.

R. E. FENTON."

The Governor's recommendation apparently did not hasten consideration of the New York tax bills, for both were approved on the 3d of June, nearly a month after the Legislature adjourned.

April 7. To the Senate:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 7, 1868.

"I have the honor to transmit a report submitted by Mr. John Jay, a special commissioner appointed to represent the State Board of Managers of the National Ceme-

tery, at Antietam. In addition to much interesting information respecting the management of the Cemetery, the report is accompanied by an official list of the soldiers from this State who fell upon the battlefield, authenticated by a careful comparison with original records, and possessing great historic value.

R. E. FENTON."

For report see Senate Document No. 82.

April 23. To the Assembly:

"EXECUTIVE DEPARTMENT,
ALBANY, *April* 23, 1868.

"I have the honor to transmit the report of the Auditing Board created by Chapter 397 of the Laws of 1862, and authorized to examine and audit claims against the State for expenses in connection with raising volunteers during the recent war. The duties of the Board, under the law, have now closed, and the appropriation applicable to the exercise of the authority conferred expired by constitutional limitation on the 21st instant. The labors of the Board have been of great importance in the adjustment of the complicated accounts growing out of the raising and organization for the service of nearly a half million of men and which became more difficult from the want of a well settled policy and regulations between the State and the United States in raising volunteers. The total number of claims presented was 1,352 and of these the Board allowed 728, and 624 were disallowed. The original appropriation was $500,000, and the aggregate amount of the claims admitted was $294,948.92, and $294,800.33 were rejected.

The report of the Board which is comprised of Inspector General Geo. S. Batcheller, Judge Advocate General C. H. Young and Quartermaster General E. A. Merritt, presents the basis of action upon which the several claims have been adjusted, and the precedents thus established will have

great value in the determination of the many similar claims that may hereafter be presented to the Legislature. I respectfully commend the report to your favorable attention.

R. E. FENTON."

For report see Assembly Document No. 157.

April 28. To the Senate:

Veto of a bill entitled "An act to authorize the construction of a railroad in 125th Street, and certain other streets, roads and avenues in the city of New York."

"It is proposed by this bill to confer upon certain persons named therein, and their assignees, authority to construct and operate a railroad with double or single track, 'commencing at the foot of One Hundred and Thirtieth street, North river, and running thence through and along One Hundred and Thirtieth street, Manhattan street, and One Hundred and Twenty-fifth street to the Harlem river; also, from One Hundred and Twenty-fifth street through and along Third avenue to the Harlem river; thence east from Third avenue along One Hundred and Thirtieth street to Harlem river, and through and along Eleventh avenue, the Bloomingdale road, Tenth avenue and Kingsbridge road to Kingsbridge, together with the necessary crossings, turnouts, junctions, stands and switches.'

I have been thus particular in reciting the territory which the grantees are authorized to appropriate to the uses specified in the bill, in order to show the magnitude of the proposed franchise, and the great importance of well considered safeguards against a diversion or abuse of the privileges conferred.

Without considering the important interests to be affected by the proposed enactment, I should feel constrained to withhold my assent from the bill upon the ground that the extent and description of the route is mani-

festly vague and indefinite. It will be conceded that an irrepealable grant of such important and extensive privileges should be so carefully defined and restricted as to leave no doubt as to the scope and authority conferred. It may be, that the purpose of the grantees extends only to the laying of a single or double track across the city and from a point on or adjacent to the Harlem river north of Kingsbridge, a distance of ten or twelve miles. From a careful examination, however, I am led to believe that authority is given by the bill to construct a railroad, with single or double tracks, throughout the entire length of Tenth avenue, Eleventh avenue, the Bloomingdale road, and the Kingsbridge road, fully thirty miles, as will appear from the approximate estimate of distances, which I respectfully submit:

125th street, Hudson to Harlem river, about..	3	¼ miles.
130th street, Hudson river to Manhattan street, about.		⅛ mile.
10th avenue, from West Twelfth street to Ft. George tract, about	10	miles.
11th avenue, from West Fourteenth street to Ft. George tract, about	10	miles.
(About 2½ miles of this avenue forms part of the road or public drive commonly known as the Boulevard.)		
Kingsbridge road from 155th street to Kingsbridge, say.	5	miles.
Bloomingdale road from Manhattan street, to 144th street, about.		¾ miles.
Manhattan street from 125th to 130th street, about.	1	mile.
Third avenue from 125th street to Harlem bridge, about.		¼ mile.
130th street from Third avenue to Harlem river, about.		⅛ mile.

The extent of the territory covered by the grant will at once arrest the attention as among the most remarkable of all the city railroad franchises, even if it has a parallel in the history of any past legislation upon the subject.

It will be further observed that the bill requires the road to be completed to 155th street within two years, but no penalty or forfeiture is prescribed for failure in this particular, neither is the period fixed for the completion of the larger part of the road, or the termination of the grant. While the public interest may not require that the whole of the proposed roads should be constructed within two years, it will be admitted that there should be some limit, so that the enterprise and capital of other parties could be enlisted in the event of the failure or refusal of the grantees to avail themselves of all the provisions of this act, within some appropriate period.

It may not be an objection to the bill that the proposed road occupies a part of the public drive known as the Boulevard, just located at great expense, and about to be laid out and embellished by the Commissioners of the Central Park. It would seem, however, that such an avenue should not be diverted to uses never contemplated by the public authorities or owners of property upon it and adjacent to it, without the fullest opportunity for consultation with the city authorities and a reasonable concurrence of public and private interests.

Nor is it too much to say, that careful provision should be made for payment into the city treasury of a fair equivalent for privileges so extensive, and prospectively so valuable. It is true, that the bill provides that after the expiration of seven years, the grantees shall annually pay to the city of New York ' five per cent of the net profits for the year ending the first day of December previous thereto,' but it is apparent that the consideration named is disproportionate to the value of the grant, if indeed it is not wholly delusive. The sum mentioned can hardly be regarded as of any practical moment or of any certain

amount, when it is understood that there is no limit to the expense to be annually incurred, save the discretion of the grantees, and the net profits can only be arrived at after all expenses are paid and no penalty is imposed for the neglect or refusal of the grantees to execute any requirement whatever.

A further reason why I cannot give my assent to this bill, consists in the fact the proposed grant may assume the character of an irrevocable vested right, which I regard as in violation of sound public policy. Especially, in the great and rapidly growing city of New York, it is not easy to foresee what public necessity may in the future arise to require some modification or change of the route proposed, or of some of the provisions of the bill; nor what policy in respect to the streets is best adapted to subserve the convenience of the public a few generations hence. Instead of this, as it seems to me, the most vital reservation of authority, the Legislature confers upon the parties named and their assigns, a perpetual franchise, absolute and irrepealable. I cannot conceal from myself the danger of such an unlimited and exclusive grant, conferring such extensive privileges in a city where business expansion, commercial growth and almost marvelous enterprise are the daily experience, and under the changing conditions that are liable to result therefrom, such a grant may become highly injurious and oppressive.

It will be seen that the provisions of the bill throughout confer upon the grantees very large powers in respect to entering streets and acquiring property, and the restrictions are very few and feeble. In the second section a supervisory authority only is conceded to the common council as regards the frequency of running the cars, but with this exception there is no restriction nor supervision whatever; while the fourth section perpetually enjoins the corporation of the city of New York from giving any assent to or allowing any other company to construct any railroad upon the streets, avenues and roads named 'or

from doing any other act to hinder or obstruct the construction or operation of the said railroad as herein authorized.'

I have thus briefly stated the reasons which control me in refusing my assent to this bill. I regret the necessity for differing with the Legislature, yet I must believe that, upon further consideration, the objections I have made will be deemed to outweigh the advantages to result from the proposed enactment."

The bill was not passed over the veto.

April 28. To the Senate:

Veto of a bill entitled "An act in relation to sheriffs."

"It proposes to increase largely the present fees of sheriffs, as will appear from the following comparative statement:

	Fees allowed by Revised Statutes.	Allowed by bill.
For service of process	$0.50	$1.00
For service of order of arrest	0.50	2.00
For approving a bond	0.37½	1.00
For collection of money on executions or on warrant issued by the Comptroller or any county treasurer on sums not above $250	2½ p. c.	5 p. c.
On sums above $250 and less than $500.	1 c. and 2½ mills.	
On $500 and less than $5,000		2½ p. c.
On $5,000 and upwards		1
Mileage, reckoned from sheriff's office, per mile	$0.06	$0.10
Return of execution	0.69	1.00
Inquest jury	1.50	3.00
Special jury	1.12½	3.00
Writ of possession	1.25	3.00
Granting liberties of jail	0.37½	1.00

The bill further provides that the sheriff of the county of New York shall be entitled to an addition of ten per cent. on the foregoing amounts, and confers upon him the sole and exclusive authority to execute all judgments of foreclosure and sale made in the city and county of New York.

The importance of the office of sheriff must be admitted, and it is believed to be true, that under the present tariff of fees and charges, its emolument in nearly if not quite all the counties of the State, is commensurate with its importance and responsibility. This circumstance alone is sufficient to explain the fact, that in a majority of counties the duties of this office are not only willingly assumed, but the office is earnestly sought by men of high character and qualifications. In most localities it is believed that the revenues of this office have steadily increased by reason of augmented population and the consequent enlargement of business enterprises, and perhaps the greater accumulation of wealth. It is possibly true that the revenues of the office may not in all cases have been graduated to the changing values of commodities and the cost of living; but considering the general advance in property and the extension of business transactions, it seems altogether probable that the revenues of the office of sheriff have been correspondingly increased. It appears to me, that so long as the office is reasonably remunerative under the present tariff of fees, this is no time to propose a large advance, and that the public interests do not require the changes proposed in the bill.

If it shall prove true as predicted by many, that we are rapidly approaching a period of financial and commercial embarrassment of unusual severity and duration, while the general business interests must of necessity greatly suffer, it is certain that a calamity of this character only serves to increase the business and profits of the sheriff; and, in my judgment, it is not wise at this time to augment so largely the already quite ample reward to this class of officers.

Even if the bill could be justified on sound principles of public policy, authorizing additional compensation, I am still unable to discover any good reason for the discrimination in respect to fees and official duties which the bill creates in favor of the sheriff of the city and county of New York. If it be claimed that the magnitude of the responsibilities that attach to the office in the Metropolis entitle the sheriff to greater pay than in other counties, the operation of the present law affords the adequate remedy. It cannot be admitted that the ratio of increase should be so marked in favor of that city. It is said that the emoluments of this office in the city of New York are now not much less than $100,000 a year; but if those figures are possibly too large, it may still be said that the rapid growth of this great commercial mart and its almost fabulous increase of business, wealth and population, must attach to the office of sheriff a very great annual compensation. It is well understood that this office in New York city has always been eagerly sought for, and it may be presumed not less because of the honor and power conferred, than for its pecuniary value; and I cannot doubt that if the income of the office should remain where it is, with the natural and legitimate increase from causes referred to, it will continue to be a leading object of personal and political attainment.

The propriety of enlarging the scope of his duties by requiring him to execute all judgments of foreclosure and sale in the city and county of New York, may well be questioned. In my judgment it is unwise. It is better and safer to leave it to the court pronouncing the judgment, to say whether a sale shall be made by a sheriff, or by an officer of its own selection, and the exercise of this discretion might depend upon a great variety of circumstances after hearing the parties concerned. I may also be permitted to suggest that by existing laws the fees of a referee or sheriff in such sales are limited to a moderate amount, not at all depending on the value of the property to be sold. I am led

to think, however, that the bill might be construed to allow the sheriff poundage on sales in foreclosure, partition and the like, as upon ordinary sales upon execution. In such case, a sale of very valuable property in the city of New York, would give the sheriff enormous fees, and subject parties to onerous exactions.

In view of these suggestions, I am of the opinion that this bill would invest the sheriff of New York in all cases with powers in the sale of real estate, which may be liable to great abuse, and this consideration alone would induce me to withhold my assent from the bill.

I am reluctant at all times to refuse my sanction to any measure which the Legislature has approved, yet it seems to me clear that the bill should receive further consideration."

The bill was not passed over the veto.

May 4. To the Senate:

Veto of a bill entitled "An act to provide for the widening of West Street in the city of New York on the westerly side thereof, from Battery Place to Hammond Street.

"Under existing laws, full authority is conferred on the common council of the city of New York to direct, by ordinance, for improvements of the class named in this bill, with all the safeguards in respect to public and private rights, and all the restrictions deemed essential to the faithful execution of powers so largely affecting interests of very great importance. It will be seen, however, that the bill authorizes the street commissioner to fill in, widen and regulate — and erect the necessary protecting bulkheads — West street as stated in the title, from Battery Place to Hammond street, a distance as nearly as I can ascertain, of about three miles, and involving an expenditure of a vast sum of money, depending entirely on the discretion of the street commissioner. There is no provision in the bill requiring that the work shall be given out by con-

tract to the lowest bidder, and subject to the restrictions and limitations usual in such cases, but the street commissioner has full power to do the work, or cause it to be done 'in such manner as he shall find to be necessary or deem proper.'

Inasmuch as the common council are invested with ample powers in the opening, extending, altering or otherwise improving any street, it is difficult to conceive of any good reason founded in public convenience or necessity, for this special, and, as it seems to me, somewhat extraordinary enactment. The bill certainly departs widely from the practice heretofore regarded as essential for the protection of public and private interests, and I cannot but regard a precedent of this character a dangerous innovation, unless based upon some consideration not disclosed in the bill, and not apparent to me by any information I can obtain.

In the amended charter of the city, section 38, chapter 446, Laws of 1857, it is provided that whenever any work is to be done which shall involve the expenditure of more than $250, the same shall be by contract, under such regulations concerning it as shall be established by ordinance of the common council, and all such contracts shall be given to the lowest bidder. The act of 1813, entitled 'An act to reduce the several laws of the city of New York into one act,' provides that 'whenever and so often as it shall, in the opinion of the said mayor, aldermen and commonalty, in common council convened, be necessary or desirable for the public convenience or health, to lay out, form and open any street or streets, or public place or places, in any part of the said city not laid out into streets, avenues or squares, and public places by the commissioner of streets and roads in the city of New York, or to extend, alter or otherwise improve any street or streets, or part of a street already laid out, or hereafter to be laid out, * * * it shall be lawful for the said mayor, aldermen and commonalty to order and direct the same to be done, and to

cause the same to be done accordingly.' With such well considered provisions upon this whole subject, it seems to me clear that this improvement should be under the control of the common council, which may be presumed to be better acquainted with the character and requirements of the undertaking, and where the owners of property and business interests directly affected can have the fullest opportunity for a fair hearing and consultation.

It will be further observed, that by this bill no assessment for damages is directed or required, and the whole expense is to be levied upon property deemed to be benefited by the improvement. The appointment of three (3) commissioners by the Supreme Court upon application of the street commissioner, to make such assessment, seems to be superfluous, for the reason that it is made the duty of the board of assessors appointed under section 15, chapter 302, Laws of 1859, to make all such estimates and assessments. The board of assessors are salaried officers, and receive no fees or compensation whatever in addition to such salary for their services. On the other hand, it will be seen, that there is no limit to the fees and charges of the commissioners to be appointed by this bill, and it would appear unjust to the owners of property, in the absence of any public exigency, to compel them to bear unlimited burdens in the discretion of a single officer, in addition to those which are now necessarily imposed. It may be also remarked that under the constitution and laws, in all cases of street improvements, when an assessment for damages as well as benefit is to be made, it is required by commissioners, to be appointed by the Supreme Court, but in all other cases, when the assessment is for benefit alone, the same is required to be made by the board of assessors.[c]

It may, therefore, be said that the bill is not only an abrupt departure from established policy, in respect of the matter to which it refers, but that its various provisions

[c] Const. 1846, art. 1, § 7.

confer very extensive and unusual power upon the street commissioner. The restrictions in the bill are very inadequate; and so far as the cost of the work is concerned, which may be very great, even with the exercise of the best judgment and the most rigid economy, there is no limitation whatever to the discretion of the street commissioner. I cannot perceive why, under the provisions of this bill, the street commissioner may not, in his absolute and uncontrolled discretion, expend millions of dollars without any notice to, or consultation with those who are ultimately to pay the cost. After the expense has been incurred, special commissioners are to assess the amount upon the property supposed to be benefited, but I find no provision authorizing those who are to pay the amount, from questioning the action, discretion or authority of the street commissioner in the premises. I do not think any such bill should become a law, as it may tend, practically, to confiscate private property without due legal process.

While I am reluctant to interpose objections to bills passed by the Legislature having merely a local bearing, the innovation in the mode of conducting improvements in the city of New York, the latitude of the powers conferred, and the magnitude of the interests involved, lead me to return this bill for further consideration."

The bill was not passed over the veto.

May 6. The Legislature adjourned without day.

ACTION ON BILLS AFTER ADJOURNMENT OF THE LEGISLATURE.

May 8.

Memorandum filed with the supply bill, chapter 717:

"Although I have deemed it my duty to sign the bill entitled 'An act making appropriations for certain expenses of government, and for supplying deficiencies in former ap-

propriations,' yet I am not satisfied with the provision contained therein appropriating eighty thousand dollars for the purchase of woodlands near Clinton Prison.

The contract referred to was submitted to the Governor and Comptroller under chapter 733 of the Laws of 1867, and did not receive their approval. It does not appear that Mr. Weed has obtained a valid title to the lands which he can convey to the State, and that his rights rest only in contract. In addition to this difficulty, the State would in any event, under the terms of the contract referred to, only become the owner of an undivided interest as tenant in common, and could not use the woodlands, until the interests of the owners had been severed by partition or otherwise. In my judgment it would have been better not to have embraced this matter in this bill, but for the State to obtain title by the exercise of the right of eminent domain.

Trusting, however, that the Commissioners named will carefully investigate and properly determine the questions submitted to them, and being unwilling to defeat the entire bill, I have affixed my signature thereto."

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